ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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THURSDAY, NOVEMBER 1, 2007

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Part 1 of 2

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Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, or Major Function	Specific Regulation

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

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.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, OCTOBER 15, 2007

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

STATEMENT OF EMERGENCY
301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by October 15, 2007.

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

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

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.360, 150.603(1), 150.620
STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)
EFFECTIVE: October 15, 2007
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service.

Section 1. Definitions. (1) "Dove" means mourning dove and white-winged dove.
(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.
(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.
(2) A person shall use the following time frames when hunting migratory birds:
(a) Dove beginning on:
1. September 1 for fifty-four (54) [~~forty-five (45)~~] consecutive days; and
2. Thanksgiving Day for six (6) consecutive days[~~,~~
~~3. The Saturday after Christmas for nine (9) consecutive days~~].
(b) Woodcock beginning on the third Saturday in October for forty-five (45) consecutive days.
(c) Common snipe beginning on:
1. The third Wednesday in September for forty-seven (47) consecutive days; and
2. Thanksgiving Day for sixty (60) consecutive days.
(d) Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days.
(e) Virginia and sora rails, common moorhen and purple gallinule beginning on September 1 for seventy (70) consecutive days.
(f) Canada goose.
1. The first Saturday in September for nine (9) consecutive days;
2. Statewide except for the Ballard reporting area, and public lands in the west-central goose zone and the northeast goose zone which are established in 301 KAR 2:224.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:
(a) Doves:
1. Daily limit shall be fifteen (15);
2. Possession limit shall be thirty (30);
3. Eurasian collared doves may be taken in addition to mourning doves if the hunter leaves the head or wing attached while in the field.
(b) Woodcock:
1. Daily limit shall be three (3); and
2. Possession limit shall be six (6).
(c) Common snipe:
1. Daily limit shall be eight (8); and
2. Possession limit shall be sixteen (16).
(d) Virginia rails and sora rails, singly or in the aggregate:
1. Daily limit shall be twenty-five (25); and
2. Possession limit shall be twenty-five (25).
(e) Common moorhen and purple gallinules singly or in the aggregate:
1. Daily limit shall be fifteen (15); and
2. Possession limit shall be thirty (30).
(f) Wood duck and teal:
1. Daily limit shall be four (4), which shall not include more than two (2) wood ducks; and
2. Possession limit shall be eight (8), which shall not include more than four (4) wood ducks.
(g) Canada goose.
1. Daily limit two (2) birds; and
2. Possession limit four (4) birds.
(2) A person shall leave the head or one (1) fully-feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.
(1) Doves:
(a) The time between 11 a.m. and sunset during the September and October portions of the season, except if dove hunting on private land after September 1 the time between one-half (1/2) hour before sunrise and sunset; and
(b) The time between one-half (1/2) hour before sunrise and sunset during the November and December portions of the season.
(2) Other species listed in this administrative regulation may be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Sea-

sons on Specified Wildlife Management Areas. (1) A Wildlife Management Area owned or controlled by the department:

(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting; and

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on the Ballard, Boatwright, South Shore, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River, Westvaco Wildlife Management Area, Yatesville Lake Wildlife Management Area, and established Wildlife Management Area waterfowl refutes as posted by sign, shall only possess or use U.S. Fish and Wildlife Service approved nontoxic shot.

(3) Ballard Wildlife Management Area:

(a) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13; and

(c) A person shall not hunt woodcock.

(4) The Swan Lake Unit of Boatwright Wildlife Management Area.

(a) The body of water known as Swan Lake is closed to hunting;

(b) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2.221;

(c) A person shall not hunt snipe after October 13; and

(d) A person shall not hunt woodcock.

(5) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt doves after October 13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13, except as provided in 301 KAR 2 221;

(c) A person shall not hunt woodcock.

(6) Grayson Lake Wildlife Management Area. A person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On or from the shores of Camp Webb or the state park.

(7) Land Between the Lakes. A person shall not hunt migratory game birds between the last Saturday in September and November 30.

(8) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) Woodcock and snipe except on tracts 2, 3, 6, and 7; and

(b) On a tract designated by a number followed by the letter "A".

(9) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting

(10) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: June 8, 2007

FILED WITH LRC: October 15, 2007 at 11 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) 564-9136.

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 2007-08 season dates and bag limits within federal waterfowl hunting frameworks established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS). Most changes are the result of calendar shift. The mourning dove season will be changed from three segments back to two segments because of hunter input. Closure of the Ballard Reporting Area to September Canada goose hunting was done to permit establishment of a local flock in an effort to restore historical hunting opportunity within the region. Other amendments were limited to changes on wildlife management areas.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2007-08 early migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) and KRS 150.600(1) authorizes the Department of Fish and Wildlife Resources to establish migratory bird hunting season dates and limits.

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

(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 an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the frameworks for migratory game bird hunting seasons. This amendment reflects the federal mandate regulations for migratory bird game bird hunting under guidance of the Migratory Bird Treaty Act. Most changes are the result of calendar shift. The mourning dove season will be changed from three segments back to 2 segments because of hunter input. Closure of the Ballard Reporting Area to September Canada goose hunting was done to permit establishment of a local flock in an effort to restore historical hunting opportunity within the region. Other amendments were limited to changes on wildlife management areas.

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

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

(d) How the amendment will assist in the effective administration of the statutes: See "1(d)" above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl and 50,000 migratory game bird hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the hunting guide. Hunters will have to review the hunting guide for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt migratory game birds.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the state Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

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

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

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

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

STATEMENT OF EMERGENCY
307 KAR 1:040E

The Cabinet for Economic Development is promulgating this regulation to meet its obligations pursuant to the Incentives for Energy Independence Act, HB 1 of the 2007 Second Extraordinary Session codified at Subchapter 27 of KRS 154. The Act included an emergency effective date and became effective August 30, 2007. KRS 154.27-030 states that the Kentucky Economic Development Finance Authority (the Authority) shall establish standards and requirements for the application process through promulgation of administrative regulations in accordance with KRS Chapter 13A. As stated in HB 1, it is crucial that the Commonwealth put this process in place immediately because decisions are being made by potential applicants for these incentives that could impact the Commonwealth. Other states are competing for these applicants and time is of the essence in making the application process available. An ordinary administrative regulation is not sufficient because it will delay the processing of applications and awarding of incentives. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler simultaneously with this emergency administrative regulation. The ordinary regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
JOHN HINDMAN, Secretary

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(New Emergency Administrative Regulation)

307 KAR 1:040E. Application process for incentives for energy independence.

RELATES TO: KRS Chapter 11A, 61.878, 154.27-010 - 154.27-090.

STATUTORY AUTHORITY: KRS 154.27-030(4)(c), 154.20-033, 154.20-020

EFFECTIVE: October 8, 2007

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.27-010 through 154.27-090 requires the Kentucky Economic Development Finance Authority to establish standards and requirements for the application process for incentives for energy independence

and authorizes fees in conjunction with the application process. This administrative regulation clarifies the application process, identifies the information required for purposes of application, and clarifies the steps that shall be taken by the authority and the applicant between preliminary approval and final approval.

Section 1. Definitions. (1) "Affiliate" is defined by KRS 154.27-010(2).

(2) "Agreement" means a "tax incentive agreement" as defined by KRS 154.27-010(28).

(3) "Application" means the form Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program.

(4) "Authority" is defined by KRS 154.27-010(6).

(5) "Capital investment" is defined by KRS 154.27-010(9)

(6) "Project" means an "eligible project" as defined by KRS 154.27-010(15).

(7) "Retrofit" is defined by KRS 154.27-010(26).

(8) "Upgrade" is defined by KRS 154.27-010(30).

Section 2. Application. (1) An applicant for incentives pursuant to KRS Subchapter 154.27 shall submit an application to the authority at the applicable address stated in the application instructions.

(a) If the applicant is retrofitting or upgrading an existing business, the applicant must notify the appropriate regional office within the Department for Existing Business Development within the Cabinet for Economic Development. That office shall assign a project manager to assist the applicant in any matters concerning the Kentucky Cabinet for Economic Development.

(b) If the applicant is a new business locating in Kentucky, the applicant must notify the Department for New Business Development in the Cabinet for Economic Development. That office shall assign a project manager to assist the applicant in any matters concerning the Kentucky Cabinet for Economic Development.

(c) No application shall receive consideration without the signature of an agent of the cabinet from the appropriate office as identified in the application instructions.

(d) Applications must be received by the office identified in the application instructions as appropriate, prior to the last Friday of the month to be considered at the following month's meeting of the authority.

(2) In addition to the information required by KRS 154 27-030, the applicant shall provide as part of the application the following information:

(a) Identification of the applicant's affiliates as required by KRS 154.27-030 shall include the entity name, state of incorporation or organization, federal tax identification number or social security number for individual partners, agent for service of process, street address and telephone number, and if there are more than two (2) affiliates, shall include a diagram of the ownership structure of the affiliated companies;

(b)1. Identification of each anticipated source of eligible project funding as required by KRS 154.27-030 shall include the name of any agencies or institutions to which loan or grant applications have been submitted or are anticipated, the date of the loan or grant application submission or the anticipated date of submission, the amount and type of funds requested or to be requested, the current status of each loan or grant application, date of closing, award or transfer of funds.

2. Copies of grant or loan applications, agreements or contracts related to funding shall be provided upon request of the authority;

(c) An itemized list of the capital investment, including specific estimated cost by line item, identification of items expected to qualify for sales tax exemption, and projected date of completion of the project;

(d) Identification of the proposed feedstock and, for each type of feedstock, either anticipated or confirmed sources;

(e) A business plan for the facility, including a full analysis of the product to be produced, market potential for the product identified and any long term contracts that are already in place for sale of the product, legal structure of the applicant and identification of the management team for the applicant and, if different, at the project site;

(f) A financial statement from the applicant for the most recent fiscal year end, and if the applicant is a newly formed entity, a financial statement from the entities or individuals forming the entity,

(g) A letter from the applicant stating that, if the project is a new location, the economic development project may reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the eligible company would likely locate outside the state or, if the project is a retrofit or upgrade, a statement that the tax incentives are necessary for the retrofit or upgrade to occur.

(h) A plan for employment of Kentucky residents during construction required by KRS 154.27-030, which shall include an explanation of methods to be employed and shall describe specific actions that shall be taken by the applicant to ensure that Kentucky residents shall have opportunities for employment;

(i) If requested by authority, a letter of support from the local government describing local economic development funding or incentive as well as giving general support for the proposed project; and

(j) An application fee in the amount of $1,000.

Section 3. Use and Costs of Consultant. (1) If the authority determines pursuant to KRS 154 27-030(5)(c) that there is a need to consult with an outside expert, after preliminary approval, the authority shall contract with an outside consultant with the expertise required to analyze the project.

(2) The consultant shall review the work to be completed and provide an estimate of the cost;

(3) The applicant shall pay to the authority the total estimated cost upon execution of the consultant payment agreement.

(4) The authority shall pay the consultant from the consultant funds paid by the applicant in accordance with the terms and conditions of the consultant payment agreement.

(5) Any balance of funds remaining after completion and delivery of the consultant's analysis to the authority shall be returned to the applicant.

Section 4. Memorandum of Agreement. If the authority grants preliminary approval of the application, it shall enter into a Memorandum of Agreement with the applicant which shall include:

(1) The maximum incentive amount preliminarily approved by the authority;

(2) The amount and the percentage of incentives to be provided under each available recovery method, if applicable;

(3) Conditions for final approval, including:

(a) Verification of representations made in the application and other documents submitted in association with the application;

(b) Payment for all professional services that may result from the application including legal fees and expenses of counsel to the authority pursuant to KRS 154.20-033;

(c) A date by which the applicant shall request the final approval from the authority;

(d) Verification of information necessary for calculation of advance payment incentive if requested by applicant; and

(e) Terms and standards for amendment of the Memorandum of Agreement.

Section 5. Information Sharing. (1) The authority may seek comments and recommendations from the Governor's Office of Energy Policy and the Center for Applied Energy Research with regard to the following:

(a) Whether the facility, as proposed, is eligible for incentives pursuant to KRS Subchapter 154.27;

(b) Whether the facility is carbon capture ready as defined by KRS 154.27-010(10), if applicable, including comments regarding appropriate equipment and floor plan required for compression and storage of carbon;

(c) Feasibility of the project, including the product, the market for the product, and the process employed;

(d) Applicable permits that shall be required and projection of eligibility of the facility; and

(e) Issues or questions relating to the application and applicant eligibility for incentives.

(2) Information provided to the authority in conjunction with the

application may be shared with the Office of Energy Policy, the Department of Revenue, the Center for Applied Energy Research, and other appropriate experts or consultants, and those agencies, experts, or consultants shall maintain the confidentiality of the information provided to the extent that the information is exempt from disclosure under the Kentucky Open Records Act, KRS 61.878.

Section 6. Payment of Administrative Fees. (1) Upon final approval and execution of the agreement, the applicant shall remit to the authority an administrative fee equal to .25 percent of the incentives authorized in the tax incentive agreement, not to exceed $50,000. This administrative fee is exclusive of any expert consultant or legal fees which may be due.

(2) The applicant shall not be eligible for incentives until the administrative fee, any consultant payments or legal fees, and expenses are paid in full.

Section 7. Incorporation by Reference. (1) Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program, November, 2007 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following locations of the Cabinet for Economic Development, Monday through Friday, 8:00 a.m. to 4:30:

(a) Central Kentucky Office, 2300 Capital Plaza Tower, 500 Mero Street, Frankfort,
Kentucky 40601;

(b) East Kentucky Office, 530 South Lake Drive Prestonsburg, Kentucky 41653; or

(c) West Kentucky Office, 145 East Center Street, Suite 28, Madsonville, Kentucky 42431 if the applicant is an existing business considering a retrofit or upgrade; and

(d) Department for New Business Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601 if the applicant is a new business.

JEAN HALE, Chairman
JOHN E. HINDMAN, Secretary

APPROVED BY AGENCY: October 8, 2007

FILED WITH LRC: October 8, 2007 at 3 p.m.

CONTACT PERSON: Hollie Spade, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides clarification of the application process and the applicable steps between preliminary and final approval of the incentives available in KRS 154.27-010 through 154.27-090 as required by KRS 154.27-030.

(b) The necessity of this administrative regulation: This regulation will provide guidance for those seeking energy project inducements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.27-030 directs the Kentucky Economic Development Finance Authority (the Authority) to promulgate a regulation for this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by statute and will streamline the application process.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Companies or other entities considering location of an eligible project (alternative fuel facility, gasification facility, renewable energy facility) in the Commonwealth will have clear instructions for applying for applicable inducements. The number of those is unknown at this time. This application process will also be helpful to local economic development agencies who may be working to attract these types of 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: This regulation sets forth the application and fee requirements and identifies supplemental information that will be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to present an eligible project for approval by the Authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an application fee of $1,000 and an administrative fee for projects that receive final approval that will vary based on the size of the project. The fee is.25% of the incentives awarded. Also, expert or consultant analysis of the proposed project may be necessary and costs of any outside consultant are to be paid by the applicant pursuant to Subchapter 154.27.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the applicant project is approved by the authority, the inducements will vary depending on investment in the Commonwealth, employment in the Commonwealth, and income generated in the Commonwealth, but the inducements awarded will likely be significant.

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

(a) Initially: The Cabinet will be increasing personnel to administer the new program generally. At this time the implementation alone requires significant personnel time, but no cash expense.

(b) On a continuing basis: There will be administrative cost related to processing of the application for inducements and monitoring of the projects after they are approved to confirm continuing eligibility under the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application and administrative fee will provide some financial support, but additional budget funding will be requested in future fiscal years for administration of the incentive 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: Yes. See explanation in (4)(b) above.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: Yes. Please see (4)(b).

(9) TIERING: Is tiering applied? Tiering is used to the extent that the amount of the administrative fee is related to the amount of incentives awarded to the applicant. The fee is a percentage of total incentive awarded, so that smaller projects will pay less than larger ones.

FISCAL NOTE ON STATE OF 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 department, or school districts) 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 154.27-030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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?

(b) How much revenue will this administrative regulation generate for the state of local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it 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:

STATEMENT OF EMERGENCY
401 KAR 51:001E

The nature of the emergency is the adoption of a recently finalized federal rulemaking by the United States Environmental Protection Agency (US EPA). (Federal Register, Volume 72, No. 83, Tuesday, May 1, 2007) The federal revisions involve changes to the "major stationary source" definition under 40 C.F.R. part 51, and the "major source" definition under 40 C.F.R., part 70, as these relate to the federal Prevention of Significant Deterioration (PSD), New Source Review (NSR) and Title V Operating Permit regulations. A change was made to the component term "chemical process plants" to specifically exclude all facilities that produce ethanol through a natural fermentation process. The US EPA was concerned that, unless the federal regulations were revised, growth of the ethanol fuel industry would be stymied and the nation's efforts towards energy independence would be hampered. Ethanol, a clean-burning fuel that can be made from corn, is sold nationwide as a high-octane fuel that delivers improved vehicle performance, while reducing emissions, and improving air quality. By reducing foreign oil imports, ethanol creates American jobs and provides value-added markets to bolster agriculture and rural America. The US EPA predicts that the revised regulations will also allow for the construction of larger, more economically efficient ethanol plants with lower emissions of air pollutants per gallon of ethanol produced. Ordinary administrative regulations are not sufficient because Kentucky is a State Implementation Plan (SIP)-approved state, and has been granted delegation of authority for the federal Title V and PSD/NSR Programs. It is necessary to amend these administrative regulations in order for the Cabinet to have the authority to implement the changes in the federal regulations in Kentucky. Normal administrative regulation promulgation procedures could take as long as six (6) months to finalize. This delay could put Kentucky at an economic disadvantage with states that have the ability to immediately approve any federal change, whereby the effective date of the change for those states is the same as the federal effective date, July.2, 2007. This economic disadvantage could include the loss of federal and/or state funds that have been established as an incentive to promote the ethanol market, and thus cause Kentucky missed opportunities for locating these facilities in the Commonwealth. According to the United States Department of Agriculture, the federal incentives alone could add almost $1 billion to the bottom line of farm income across the nation. Kentucky is an ideal ethanol production market for farmers, who produce 166 million bushels of corn annually. These emergency regulations shall be replaced by ordinary administrative regulations, to be concurrently filed with the Regulations Compiler. The ordinary administrative regulations are identical to the emergency administrative regulations.

ERNIE FLETCHER, Governor
LLOYD CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Emergency Amendment)

401 KAR 51:001E. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 50, Appendices A-K, 51.100(s), 51.121, 51.165, 51.166, 53, 60 Appendices A and B, 61 Appendix B, 75, 96, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

EFFECTIVE: September 28, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO_2 or NOx imposed by the Acid Rain Program under 42 U.S C. 7651 to 7651o.

(2) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:

(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation.

1. Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period are used to calculate actual emissions.

(b) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For an emissions unit, that has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.

(d) This definition does not include:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20[~~23~~].

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination:

(a)[~~1.~~] Is to be made on a case-by-case basis;

(b)[~~2.~~] Considers the geographic extent, intensity, duration, frequency and time of visibility impairment and how these factors correlate with the times of visitor use of the Class I area; and

(c)[~~3.~~] Considers the frequency and timing of natural conditions that reduce visibility.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined in KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined in KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) "Allocate" or "allocation" means the determination by the

cabinet of the number of NOx allowances to be credited to a NOx budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source that is calculated using the maximum rated capacity of the source, unless the source is subject to federally-enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

1. The applicable standards of 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally-enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source that is calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1 to 3 of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(14) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;

2. Use of a time period other than the twenty-four (24) month period is allowed, if the cabinet determines that a different time period is more representative of normal source operation; and

3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed, where a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 401 KAR 51:052.

1. The rate is an average that:

a. Includes fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward.

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed; however, a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area, and every part of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) cannot intersect or be smaller than the area of impact of a major stationary source or major modification that.

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM_{10} increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and

2. The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase:

1. Actual emissions at a major source, that result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.

(b) For a change in method of operations, those on-site activities other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:

(a) Is determined by the cabinet on a case-by-case basis after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard of 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible,

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping, or have the same two (2) digit major group code, as described in the Standard Industrial Classification Manual, 1987;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "°C" means degree Celsius (centigrade).

(31) "Cabinet" is defined in KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined in 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH_4" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:

(a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000; or

(b) To the U.S. EPA for a similar project.

(38) [~~"Clean unit" means an emissions unit that.~~

~~(a) Has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with the applicable BACT or LAER requirements; and qualifies as a clean unit pursuant to 401 KAR 51:017, Section 20 or 401 KAR 51:052, Section 11;~~

~~(b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or~~

~~(c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(y)(3)(i) to (iv).~~

~~(39)~~] "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39)[~~(40)~~] "CO" means carbon monoxide.

(40)[~~(41)~~] "CO_2" means carbon dioxide.

(41)[~~(42)~~] "COD" means chemical oxidant demand.

(42)[~~(43) "Collateral pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.~~

~~(44)~~] "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(43)[~~(45)~~] "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(44)[~~(46)~~] "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(45)[~~(47)~~] "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96 5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(46)[~~(48)~~] "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(47)[~~(49)~~] "Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(48)[~~(50)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49)[~~(51)~~] "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50)[~~(52)~~] "Construction" means:

(a) Fabrication, erection, installation or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

(51)[~~(53)~~] "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or 401 KAR 51:052 to sample, condition, (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52)[~~(54)~~] "Continuous emission monitoring system for NOx" or "CEMS for NOx" means the equipment required by 40 C.F.R. 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emission monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O_2 or CO_2) if required by 40 C.F.R. 96.70 to 96.76;

(d) Continuous moisture monitor if required by 40 C.F.R. 96.70 to 96.76; and

(e) Automated data acquisition and handling system.

(53)[~~(55)~~] "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(54)[~~(56)~~] "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations, used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(55)[~~(57)~~] "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 and 401 KAR 51:052 to:

(a) Monitor process and control device operational parameters such as control device secondary voltages and electric currents;

(b) Monitor other information such as gas flow rate, ozone or carbon dioxide concentrations; and

(c) Record average operational parameter values on a continuous basis.

(56)[~~(58)~~] "Control period" means:

(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and

(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

(57)[~~(59)~~] "Director" means Director of the Division for Air Quality of the Environmental and Public Protection Cabinet.

(58)[~~(60)~~] "District" is defined in KRS 224.01-010(11).

(59)[~~(61)~~] "dscf" means dry cubic feet at standard conditions.

(60)[~~(62)~~] "dscm" means dry cubic meter at standard conditions.

(61)[~~(63)~~] "Electric generating unit" means, for 401 KAR 51:160 to 401 KAR 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62)[~~(64)~~] "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:

(a) A steam electric generating unit that is constructed for the purpose of supplying for sale:

1. More than one-third (1/3) of its potential electric output capacity; and

2. More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and

(b) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.

(63)[~~(65)~~] "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64)[~~(66)~~] "Emissions unit" means any part of a stationary source including an EUSGU that emits or will have the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 401 KAR 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(65)[~~(67)~~] "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards, and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66)[~~(68)~~] "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67)[~~(69)~~] "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

(68)[~~(70)~~] Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69)[~~(71)~~] "Existing source" means a source that is not a new source.

(70)[~~(72)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(71)[~~(73)~~] "°F" means degree Fahrenheit.

(72)[~~(74)~~] "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(73)[~~(75)~~] "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that expressly requires adherence

to a permit issued under the program.

(74)[~~(76)~~] "Federally-enforceable permit" means a permit issued under 401 KAR 52 020 or 401 KAR 52:030, as appropriate.

(75)[~~(77)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76)[~~(78)~~] "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77)[~~(79)~~] "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78)[~~(80)~~] "ft" means feet or foot.

(79)[~~(81)~~] "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80)[~~(82)~~] "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81)[~~(83)~~] "g" means gram.

(82)[~~(84)~~] "gal" means gallon.

(83)[~~(85)~~] "General fund" is defined in KRS 48.010(13)(a).

(84)[~~(86)~~] "Generator" means a device that produces electricity.

(85)[~~(87)~~] "gr" means grain.

(86)[~~(88)~~] "HCl" means hydrochloric acid.

(87)[~~(89)~~] "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources, and

(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.

(88)[~~(90)~~] "HF" means hydrogen fluoride.

(89)[~~(91)~~] "Hg" means mercury.

(90)[~~(92)~~] "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(91)[~~(93)~~] "hr" means hour.

(92)[~~(94)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93)[~~(95)~~] "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94)[~~(96)~~] "H_2O" means water.

(95)[~~(97)~~] "H_2S" means hydrogen sulfide.

(96)[~~(98)~~] "H_2SO_4" means sulfuric acid.

(97)[~~(99)~~] "in" means inch.

(98)[~~(100)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99)[~~(101)~~] "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100)[~~(102)~~] "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but will have a substantial likelihood of achieving:

(a) Greater continuous emissions reduction than any control system in current practice; or

(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts

(101)[~~(103)~~] "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102)[~~(104)~~] "J" means joule.

(103)[~~(105)~~] "Kg" means kilogram.

(104)[~~(106)~~] "l" means liter.

(105)[~~(107)~~] "lb" means pound.

(106)[~~(108)~~] "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107)[~~(109)~~] "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108)[~~(110)~~] "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109)[~~(111)~~] "Low terrain" means an area other than high terrain.

(110)[~~(112)~~] "Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on:

(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or

(b) The most stringent emissions limitation that is achieved in practice by the class or category of stationary sources.

1. If this limitation is applied to a modification, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.

2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(111)[~~(113)~~] "m" means meter.

(112)[~~(114)~~] "m^3" means cubic meter.

(113)[~~(115)~~] "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas.

(114)[~~(116)~~] "Major modification" means a physical change in or a change in the method of operation of a major stationary source that would result in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052; unless the change would be prohibited under a federally-enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use under a permit issued pursuant to 401 KAR 51:017 or 401 KAR 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally-enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or under 401 KAR 52:020 and 401 KAR 51:016E;

6. A change in ownership at a stationary source;

7. [~~The addition, replacement or use of a pollution control pro-~~

~~ject at an existing emissions unit meeting the requirements of 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13, as applicable;~~

~~8.~~] The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8 [~~9.~~] The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

9 [~~10.~~] The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) The definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 401 KAR 51:017, Section 20[~~23~~] and 401 KAR 51:052, Section 11[~~14~~]for a PAL for that pollutant. Instead, the definition at subsection (175)[(~~177~~)] of this section shall apply.

(115)[(~~117~~)] "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116)[(~~118~~)] "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117)[(~~119~~)] "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(118)[(~~120~~)](a) "Major stationary source" means:

1.a. A stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of a regulated NSR pollutant; or

b. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1b of this paragraph, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds is considered major for ozone.

(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Any stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119)[(~~121~~)] "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(120)[(~~122~~)] "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(121)[(~~123~~)] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(122)[(~~124~~)] "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(123)[(~~125~~)] "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C F.R. Part 75, Appendix D to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO_2 concentration (in percent CO_2) or the minimum percent O_2, if the unit intends to use a flow monitor and a diluent gas monitor.

(124)[(~~126~~)] "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O_2 or the minimum percent CO_2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(125)[(~~127~~)] "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(126)[(~~128~~)] "µg" means microgram.

(127)[(~~129~~)] "mg" means milligram.

(128)[(~~130~~)] "Mid-kiln firing" means the secondary firing in kilns

by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129)[~~(131)~~] "min" means minute.

(130)[~~(132)~~](a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to regulations approved under 40 C.F.R. 51.166 submits a complete application under the relevant regulations.

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and

2. For nitrogen dioxide, the trigger date is February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM_{10} increments, except that the cabinet may rescind the minor source baseline date if it is shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application under the relevant regulations; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131)[~~(133)~~] "MJ" means megajoules.

(132)[~~(134)~~] "mm" means millimeter.

(133)[~~(135)~~] "MM" means million.

(134)[~~(136)~~] "mo" means month.

(135)[~~(137)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(136)[~~(138)~~] "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, or replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137)[~~(139)~~] "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record, if applicable, process parameters.

(138)[~~(140)~~] "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.

(139)[~~(141)~~] "MWe" means megawatt electrical.

(140)[~~(142)~~] "N_2" means nitrogen.

(141)[~~(143)~~] "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

(142)[~~(144)~~] "Natural conditions" means those naturally-occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143)[~~(145)~~] "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP and federal air quality control laws and regulations.

(144)[~~(146)~~](a) "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4) or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as defined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 401 KAR 51:052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs[~~; and~~

~~3. The increase or decrease in emissions did not occur at a clean unit, except as provided in 401 KAR 51:017, Sections 20(7) or 21(9) or 401 KAR 51:052, Sections 11(7) or 12(9).~~]

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM_{10} emissions are used to evaluate the net emissions increase for PM_{10}.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change[~~; and~~

~~4. The decrease did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 40 C.F.R. 52.21(y) or under administrative regulation approved pursuant to 40 C.F.R. 51.166(u) or 51.165(d)~~].

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only

after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145)[(147)] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146)[(148)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(147)[(149)] "ng" means nanograms.

(148)[(150)] "NO" means nitric oxide.

(149)[(151)] "NO_2" means nitrogen dioxide.

(150)[(152)] "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.165 and 40 C.F.R. Part 51, Appendix S.

(151)[(153)] "NOx" means nitrogen oxides.

(152)[(154)] "NOx allowance" means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.

(153)[(155)] "NOx Allowance Tracking System (NATS)" means the system by which the U.S. EPA records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

(154)[(156)] "NOx authorized account representative" means the natural person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 C.F.R. Part 96, Subpart B for a NOx budget source and all NOx budget units at the source; and

(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 C.F.R. Part 96, Subpart F, for a general account.

(155)[(157)] "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(156)[(158)] "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(157)[(159)] "NOx budget source" means a source that includes one (1) or more NOx budget units.

(158)[(160)] "NOx Budget Trading Program" means the multistate NOx air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport of O_3, O_3 precursors, and NOx.

(159)[(161)] "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160)[(162)] "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(161)[(163)] "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, NOx budget unit owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(162)[(164)] "O_2" means oxygen.

(163)[(165)] "O_3" means ozone.

(164)[(166)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165)[(167)] "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166)[(168)] "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167)[(169)] "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168)[(170)] "Owner" means, for a NOx budget unit, the following persons:

(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96 83 is submitted and not denied or withdrawn; or

(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(169)[(171)] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(170)[(172)] "oz" means ounce.

(171)[(173)] "Ozone depleting potential" or "ODP", as determined by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B, means the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichloroflouromethane, CFC-11; i.e., the ODP of CFC-11 equals 1.0.

(172)[(174)] "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet

light, that are able to catalyze the destruction of stratospheric ozone.

(173)[~~(175)~~] "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174)[~~(176)~~] "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175)[~~(177)~~] "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176)[~~(178)~~] "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177)[~~(179)~~] "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178)[~~(180)~~] "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or a solid measured by an approved test method.

(179)[~~(181)~~] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(180)[~~(182)~~] "Peak load" means the maximum instantaneous operating load.

(181)[~~(183)~~] "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182)[~~(184)~~] "Person" is defined by KRS 224 01-010(17).

(183)[~~(185)~~] "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 401 KAR 51:052[~~, Section 23 or 401 KAR 51:052, Section 14~~].

(184)[~~(186)~~] "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two-and-a-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185)[~~(187)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186)[~~(188)~~] "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(187) [~~(189) "Pollution control project" or "PCP" means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air pollutants from that unit in accordance with 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13. Qualifying activities or projects include:~~

~~(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2;~~

~~(b) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;~~

~~(c) Flue gas recirculation, low NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation absorption catalyst for control of NOx;~~

~~(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of VOCs or HAPs;~~

~~(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:~~

~~1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one-hundredths (0.05) percent sulfur diesel;~~

~~2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood;~~

~~4. Switching from coal to #2 fuel oil with a five tenths (0.5) percent maximum sulfur content; and~~

~~5. Switching from high sulfur coal to low sulfur coal with a maximum one and two tenths (1.2) percent sulfur content; and~~

~~(f) Activities or projects undertaken to accommodate switching from the use of an ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.~~

~~1. The productive capacity of the equipment is not increased as a result of the activity or project; and~~

~~2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined by:~~

~~a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;~~

~~b. Calculating the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;~~

~~c. Calculating the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP; and~~

~~d. If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~

~~(190)~~] "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include recycling, other than certain in-process recycling practices, energy recovery, treatment, or disposal.

(188)[~~(191)~~] "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189)[~~(192)~~] "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190)[~~(193)~~] "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, where:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, where:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actuals PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(191)[~~(194)~~] "ppb" means parts per billion.

(192)[~~(195)~~] "ppm" means parts per million.

(193)[~~(196)~~] "ppm(w/w)" means parts per million (weight by weight).

(194)[~~(197)~~] "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195)[~~(198)~~] "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and other information, such as gas flow rate, ozone or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(196)[~~(199)~~] "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197)[~~(200)~~] "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198) [~~(201) "Primary pollutant" means a regulated NSR pollutant for which a pollution control project is undertaken to reduce emissions of that pollutant.~~

~~(202)~~] "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199)[~~(203)~~] "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity; filings with the cabinet and the U.S. EPA; and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.

(200)[~~(204)~~] "psia" means pounds per square inch absolute.

(201)[~~(205)~~] "psig" means pounds per square inch gage.

(202)[~~(206)~~] "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203)[~~(207)~~] "Reactivation of a very clean coal-fired EUSGU" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;

(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671q.

(204)[~~(208)~~] "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. 7501 to 7515 or may reasonably be required by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.

(205)[~~(209)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206)[~~(210)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207)[~~(211)~~] "Regulated NSR pollutant" means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the U.S. EPA;

(b) A pollutant that is subject to any standard promulgated under 42 U S C. 7411;

(c) A pollutant that is subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

(208)[~~(212)~~] "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209)[~~(213)~~](a) "Repowering" means:

1. Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; and

2. An oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.

(b) A permit application from a source that satisfies this definition shall receive expedited consideration by the cabinet and is granted an extension under 42 U.S.C. 7651h.

(210)[~~(214)~~] "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211)[~~(215)~~] "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212)[~~(216)~~] "S" means at standard conditions.

(213)[~~(217)~~] "sec" means second.

(214)[~~(218)~~] "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215)[~~(219)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(216)[~~(220)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(217)[~~(221)~~] "Shutdown" means the cessation of an operation.

(218)[~~(222)~~] "Significant" means:

(a) For 401 KAR 51 017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2×10^{-6} megagrams per year (Mg/y) (3.5×10^{-6} tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	35 Mg/y (50 tpy)

(b) For 401 KAR 51.017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) $\mu g/m^3$ over a twenty-four (24) hour average.

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

(219)[~~(223)~~] "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220)[~~(224)~~] "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level as defined in [~~subsection (221) of~~] this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221)[~~(225)~~] "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in [~~subsection (220) of~~] this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222)[~~(226)~~] "SO_2" means sulfur dioxide.

(223)[~~(227)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224)[~~(228)~~] "sq" means square.

(225)[~~(229)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226)[~~(230)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227)[~~(231)~~] "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg).

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228)[~~(232)~~] "Start-up" means the setting in operation of an affected facility.

(229)[~~(233)~~] "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230)[~~(234)~~] "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

(231)[~~(235)~~] "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(232)[~~(236)~~] "TAPPI" means Technical Association of the Pulp and Paper Industry.

(233)[~~(237)~~] "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(234)[~~(238)~~] "Ton" or "tonnage" means, for a NOx budget source, a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(235)[~~(239)~~] "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(236)[~~(240)~~] "tpy" means tons per year.

(237)[~~(241)~~] "TSS" means total suspended solids.

(238)[~~(242)~~] "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(239)[~~(243)~~] "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(240)[~~(244)~~] "Urban county" means a county that is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county shall be a part of an urbanized area, then the entire county shall be classified as urban for the administrative regulations of the Division for Air Quality.

(241)[~~(245)~~] "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(242)[~~(246)~~] "U.S. EPA" means the United States Environmental Protection Agency.

(243)[~~(247)~~] "UTM" means Universal Transverse Mercator.

(244)[~~(248)~~] "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration, from that which would have existed under natural conditions.

(245)[~~(249)~~] "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).

(246)[~~(250)~~] "yd" means yard.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget";

(b) "40 C.F.R. Part 82, Appendix A to Subpart A of Part 82 - Class I Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003"; and

(c) "40 C.F.R. Part 82, Appendix B to Subpart A of Part 82 - Class II Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3)(a) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650.

(b) Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 28, 2007 at 3 p.m.
CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions regulation assists the public and the regulated community by defining the terms used in 401 KAR Chapter 51.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the definitions to mirror recent amendments at the federal level (72 Fed.Reg. 24077 May 1, 2007). It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment revises the definition of terms used in Kentucky's Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are based upon federal revisions affecting Kentucky's PSD and NSR regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendments will provide the definitions of terms used in 401 KAR Chapter 51.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation does not directly impact individuals, organizations, or state and local governments.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an

amendment: This regulation does not directly impact individuals, organizations, or state and local governments.

(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 regulation does not directly impact individuals, organizations, or state and local governments.

(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 costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits related to this regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This regulation will not require an increase in fees or funding in order to implement its provisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this regulation provides the definitions of terms for 401 KAR Chapter 51 and imposes no requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation. However, recent changes in the federal PSD/NSR Program make it necessary to revise the regulation in order to ensure program parity.

2. State compliance standards. The state compliance standards are found in KRS 224.01-010, 224.10-100(5), 224 20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this regulation. However, changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no requirements because it only provides definitions of terms used in 401 KAR Chapter 51.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

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 Division for Air Quality implements this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5) authorizes the cabinet to promulgate regulations for the prevention, abatement, and control of air pollution. This regulation simply defines the terms used in 401 KAR Chapter 51 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no direct costs 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:

STATEMENT OF EMERGENCY
401 KAR 51:017E

The nature of the emergency is the adoption of a recently finalized federal rulemaking by the United States Environmental Protection Agency (US EPA). (Federal Register, Volume 72, No. 83, Tuesday, May 1, 2007) The federal revisions involve changes to the "major stationary source" definition under 40 C.F.R. part 51, and the "major source" definition under 40 C.F.R., part 70, as these relate to the federal Prevention of Significant Deterioration (PSD), New Source Review (NSR) and Title V Operating Permit regulations. A change was made to the component term "chemical process plants" to specifically exclude all facilities that produce ethanol through a natural fermentation process. The US EPA was concerned that, unless the federal regulations were revised, growth of the ethanol fuel industry would be stymied and the nation's efforts towards energy independence would be hampered. Ethanol, a clean-burning fuel that can be made from corn, is sold nationwide as a high-octane fuel that delivers improved vehicle performance, while reducing emissions, and improving air quality. By reducing foreign oil imports, ethanol creates American jobs and provides value-added markets to bolster agriculture and rural America. The US EPA predicts that the revised regulations will also allow for the construction of larger, more economically efficient ethanol plants with lower emissions of air pollutants per gallon of ethanol produced. Ordinary administrative regulations are not sufficient because Kentucky is a State Implementation Plan (SIP)-approved state, and has been granted delegation of authority for the federal Title V and PSD/NSR Programs. It is necessary to amend these administrative regulations in order for the Cabinet to have the authority to implement the changes in the federal regulations in Kentucky. Normal administrative regulation promulgation procedures could take as long as six (6) months to finalize. This delay could put Kentucky at an economic disadvantage with states that have the ability to immediately approve any federal change, whereby the effective date of the change for those states is the same as the federal effective date, July 2, 2007. This economic disadvantage could include the loss of federal and/or state funds that have been established as an incentive to promote the ethanol market, and thus cause Kentucky missed opportunities for locating these facilities in the Commonwealth. According to the United States Department of Agriculture, the federal incentives alone could add almost $1 billion to the bottom line of farm income across the nation. Kentucky is an ideal ethanol production market for farmers, who produce 166 million bushels of corn annually. These emergency regulations shall be replaced by ordinary administrative regulations, to be concurrently filed with the Regulations Compiler. The ordinary

administrative regulations are identical to the emergency administrative regulations.

ERNIE FLETCHER, Governor
LLOYD CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Emergency Amendment)

401 KAR 51:017E. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, sec. IV, Part 51, Appendix W, 51.166, 52.21, Part 58, Appendix B, 60, 61, 63, 81.318, 81 Subpart D, 42 U.S C. 7401-7671q (Clean Air Act), 4321-4370d (National Environmental Policy Act)

STATUTORY AUTHORITY: KRS 224.10-100[~~, 40 C.F.R. 51.166, 52.21~~], 42 U.S.C. 7401-7671q (Clean Air Act)

EFFECTIVE: September 28, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 C.F.R. 51.166.

Section 1.. Applicability. (1) This administrative regulation shall apply to the construction of a new major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (iii).

(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.

(3) The owner or operator of a new major stationary source or major modification, which is subject to the requirements of Sections 8 to 16 of this administrative regulation, shall not begin actual construction without a proposed permit or proposed permit revision issued under 401 KAR 52.020 stating that the major stationary source or major modification shall meet those requirements.

(4) Applicability tests for projects. Except as provided in subsection (5) or (6) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. [~~Emissions test for projects that involve clean units. An emission increase shall not be deemed to occur for a project that will be constructed and operated at a clean unit without causing the unit to lose its clean unit designation as provided in Sections 20 and 21 of this administrative regulation.~~

~~4.~~] Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using a method specified in subparagraphs 1 to 2[3] of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable procedure of paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1[~~(146)~~].

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 20[~~23~~] of this administrative regulation.

[~~(6) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 22 of this administrative regulation.~~]

Section 2. Ambient Air Increments. (1) In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the following levels:

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
PM_{10}, annual arithmetic mean	4
PM_{10}, 24-hour maximum	8
Sulfur Dioxide	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hour maximum	30
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. Ambient Air Ceilings. The concentration of a regulated NSR pollutant shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 4. Restrictions on Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000

acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 5. Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52.100, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from these sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (3) of this section.

(2) Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an order and curtailment plan are applicable, an exclusion shall apply more than five (5) years after the later of the two (2) effective dates.

(3) For excluding concentrations pursuant to subsection (1)(d) of this section:

(a) The time period over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur shall be specified and shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be renewable;

(c) An emissions increase from a stationary source shall not occur that will:

1. Impact a Class I area or an area in which an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall not exceed the levels occurring from those sources before the revision was approved.

Section 6. Stack Heights. (1) The degree of emissions limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 7. Exemptions. (1) Sections 8 to16 of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more.

(b) The major stationary source is a nonprofit health institution, a nonprofit educational institution, or a major modification at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements.

(c) The source or modification is a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants, furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, <u>except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140</u>;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(d) The source or modification is a portable stationary source that has previously received a permit under this administrative regulation; and

1. The owner or operator proposes to relocate the source and emissions of the source at the new location will be temporary;

2. The emissions from the source will not exceed its allowable emissions;

3. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987,

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this administrative regulation for particulate matter requirements in effect before July

31, 1987, and the owner or operator submitted an application for a permit under the applicable permit program before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect.

(2) Sections 8 to16 of this administrative regulation shall not apply to a major stationary source or major modification for a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(3) Sections 9,11, and 13 of this administrative regulation shall not apply to a proposed major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) Sections 9, 11, and 13 of this administrative regulation, as applicable to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT will be less than fifty (50) tons per year.

(5) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 μg/m^3	8-hour average
Nitrogen dioxide	14 μg/m^3	annual average
Particulate matter	10 μg/m^3 of PM_{10}	24-hour average
Sulfur dioxide	13 μg/m^3	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 μg/m^3	3-month average
Fluorides	0.25 μg/m^3	24-hour average
Hydrogen sulfide	0.2 μg/m^3	1-hour average
Total reduced sulfur	10 μg/m^3	1-hour average
Reduced sulfur compounds	10 μg/m^3	1-hour average

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection, or the pollutant is not listed in the table.

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM_{10}, if:

(a) The owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increases for PM_{10} took effect as part of Kentucky's SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(8)(a) The cabinet may determine that the requirements for air quality monitoring of PM_{10} in Section 11 of this administrative regulation shall not apply to a particular source or modification, if:

1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and

2. The cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 11 of this administrative regulation.

(b) The requirements for air quality monitoring of PM_{10} in Section 11 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and no later than December 1, 1988.

1. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 of this administrative regulation; and

2. If the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, which may not to be less than four (4) months, the data that Section 11 of this administrative regulation requires shall have been gathered over that shorter period.

(9) The requirements of Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM_{10}, if:

(a) The owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM_{10} took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

(b) Instead, the requirements of Section 9(2) shall apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

Section 8. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP and each applicable emissions standard and standard of performance under 40 C.R.R. Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant for which the source has the potential to emit in significant amounts.

(3) A major modification shall apply BACT:

(a) For each regulated NSR pollutant that results in a significant net emissions increase at the source; and

(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects:

(a) The cabinet shall review and modify, as appropriate, the BACT determination at the latest reasonable time occurring no later than eighteen (18) months prior to commencement of construction of each independent phase of the project; and

(b) The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a previous BACT determination for the source.

Section 9. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) A national ambient air quality standard in an air quality control region; or

(2) An applicable maximum allowable increase over the baseline concentration in any area.

Section 10. Air Quality Models. (1) Estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models" (2003), Appendix A".

(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

(a) The use of a modified or substitute model shall be:

1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and

2. Made on a case-by-case basis and receive written approval from the U.S. EPA

(b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50.040, Section 1(3), shall be used to determine the comparability of air quality models.

Section 11. Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit or permit revision under 401 KAR 52:020 and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following:

1. For a source, each pollutant that the source will have the potential to emit in a significant amount;

2. For a modification, each pollutant that the modification will result in a significant net emissions increase.

(b) For a pollutant that does not have a national ambient air quality standard, the analysis shall contain air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants, other than nonmethane hydrocarbons, for which a standard exists, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d)1. The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application.

2. If the cabinet determines that a complete and adequate analysis may be accomplished with monitoring data gathered over a period shorter than one (1) year, that period shall be not less than four (4) months.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone instead of providing preconstruction data as required in this section.

(f) For air quality monitoring of PM_{10} under Section 7(8)(a) and (b) of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PM_{10} using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet.

(2) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator shall conduct ambient monitoring that the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. During the operation of air quality monitoring stations, the owner or operator of a major stationary source or major modification shall meet the requirements of 40 C.F.R. Part 58, Appendix B to satisfy the air quality analysis requirements of this section.

Section 12. Source Information. The owner or operator of a proposed source or modification shall submit to the cabinet all information necessary to perform an analysis or make a determination required under this administrative regulation.

(1) The information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification; and

(c) A detailed description of the system of continuous emissions reduction planned for the source or modification, emissions estimates, and other information necessary to determine that BACT will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the source or modification will affect.

Section 13. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that will occur as a result of:

(a) The source or modification; and

(b) General commercial, residential, industrial and other growth associated with the source or modification.

(2) The owner or operator shall not be required to provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(3) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(4) Visibility monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using:

1 [~~(1)~~] Human observations;

2 [~~(2)~~] Teleradiometers;

3 [~~(3)~~] Photographic cameras;

4 [~~(4)~~] Nephelometers;

5 [~~(5)~~] Fine particulate monitors; or

6 [~~(6)~~] Other appropriate methods as specified by the U.S. EPA.

(b) The method selected shall be determined on a case-by-case basis by the cabinet.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide;

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification that may affect the Class I area.

(b) Notice promptly after receiving the permit application. The notice shall:

1. Include a copy of all information relevant to the permit application:

2. Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct;

3. Include an analysis of the proposed source's anticipated impacts on visibility in the Class I area.

(c) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determina-

tion and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect visibility and other air quality related values of the lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.

(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

(b) If the cabinet finds the analysis does not demonstrate to the cabinet's satisfaction that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained.

(4) Denial; impact on air quality related values.

(a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values of those lands, even though the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area.

(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, the cabinet shall not issue the permit or permit revision.

(5) Class I variances.

(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will have no adverse impact on the visibility or other air quality related values of lands located in a Class I area, even though the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area as specified in Section 2(1) of this administrative regulation.

(b) If the federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and he so certifies, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit or permit revision with emissions limitations that are necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in Section 2(1) of this administrative regulation.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.

(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance will not adversely affect the visibility or other air quality related values of the area.

(b) The governor, after consideration of the federal land manager's recommendation, if applicable, and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.

(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence.

(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.

(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with the requirements of 401 KAR Chapter 52, if the other applicable requirements of this administrative regulation are met.

(8) Emissions limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with the emissions limitations necessary to assure that:

(a) Emissions of sulfur dioxide from the source or modification shall not, during a day on which the other applicable maximum allowable increases are exceeded, cause or contribute to concentrations that will exceed the maximum allowable increases over the baseline concentration as specified in the following table; and

Maximum Allowable Increase (Micrograms per cubic meter)		
	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(b) Emissions shall not cause or contribute to concentrations that exceed other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days which are not necessarily consecutive during an annual period.

Section 15. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100, and 40 C.F.R. 51.166(q) and this administrative regulation in processing applications under this administrative regulation.

Section 16. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 68 and other requirements of local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, Sections 8 to 16 of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator elects to use the method specified in 401 KAR 51.001, Section 1[~~(202)(b)~~] to calculate projected actual

emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

(d)1. If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator:

a. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet, but

b. Shall not be required to obtain a determination from the cabinet before beginning actual construction.

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that set out the unit's annual emissions during the calendar year that preceded submission of the report.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceeds the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under [te] this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 17. Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement under 42 U.S.C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 to the maximum extent feasible and reasonable.

Section 18. Innovative Control Technology (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet may, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) of this administrative regulation by a date specified by the cabinet. The date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance,

(c) The source or modification will meet requirements equivalent to those in Sections 8 and 9 of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology will be required to meet on the date specified by the cabinet;

(d) The source or modification will not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard, or

2. Impact an area in which an applicable increment is known to be violated;

(e) Section 14 of this administrative regulation relating to Class I areas has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date and contributes to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

Section 19. Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. [~~Clean Unit Test for Emissions Units that are Subject to BACT or LAER. For any emissions unit that is subject to BACT or LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emis-~~

~~sions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (3) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (4) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with BACT in the permit for the unit; and~~

~~2. Alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with BACT in the permit for the unit, or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.~~

~~(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.~~

~~2. Qualifying air pollution control technologies requirement. Air pollution emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:~~

~~a. The control technology shall achieve the BACT or LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;~~

~~b. The emissions unit shall not be eligible for the clean unit designation if the BACT determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and~~

~~c. The owner or operator shall have made an investment to install the control technology. An investment shall include expenses to research the application of or to actually apply a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 21 of this administrative regulation.~~

~~1. For an emissions unit that is requalifying for clean unit designation, an owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52.020.~~

~~2. The permit shall require compliance with the current day BACT or LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.~~

~~(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day BACT shall be:~~

~~1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and~~

~~2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.~~

~~(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.~~

~~(4) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current day BACT, the expiration date of the clean unit designation shall be:~~

~~1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:~~

~~1. Ten (10) years after the effective date; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (6) of this section.~~

~~(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.~~

~~(b) The effective date of the clean unit designation.~~

~~1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of the clean unit designation.~~

~~1. If the exact expiration date is not known at the date the clean unit designation is initially recorded into the Title V permit, the permit shall describe the event that shall determine the expiration date.~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~3. If originally absent for the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with BACT and any physical or operational characteristics that formed the basis for the BACT determination.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.~~

~~(6) Maintaining the clean unit designation.~~

~~(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.~~

~~1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the BACT that are recorded in the major NSR permit or permit revision and subsequently reflected in the Title V permit;~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination;~~

~~3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and~~

~~4. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(7) Netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis unless:~~

~~1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall also be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(8) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 21. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to BACT. For an emissions unit at a major stationary source that does not qualify as a clean unit under Section 20 of this administrative regulation but is achieving a level of emissions control comparable to BACT, the owner or operator may use the clean unit test specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT according to subsection (3) of this section; and~~

~~2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT according to subsection (7)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT.~~

~~(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:~~

~~a. Demonstrate that an emissions unit's control technology is comparable to BACT according to the requirements of subsection (3) of this section;~~

~~b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and~~

~~c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:~~

~~a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~b. Adversely impact visibility or another air quality related value that has been identified as a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~3. Date of installation requirement.~~

~~a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which a clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.~~

~~b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.~~

~~(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 20 of this administrative regulation.~~

~~1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current day BACT.~~

~~2. The emissions unit shall meet the requirements of subsections (2)(a)1 and 2 of this section.~~

~~(3) Demonstrating control effectiveness comparable to BACT. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to BACT under the provisions of either paragraph (a) or (b) of this subsection.~~

~~(a) Comparison of the control technology to previous BACT and LAER determinations.~~

~~1. An emissions unit's control technology shall be presumed to be comparable to BACT if:~~

~~a. The control technology achieves an emissions limitation that is equal to or better than the average of the emissions limitation achieved by all the sources for which a BACT or LAER determination has been made within the preceding five (5) years and entered into the RACT/BACT/LAER Clearinghouse; and~~

~~b. Application of the BACT or LAER control technology to the emissions unit is technically feasible.~~

~~2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to BACT, the cabinet shall:~~

~~a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period; and~~

~~b. Compare this presumption to any additional BACT or LAER determinations of which the cabinet is aware.~~

~~(b) The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT pursuant to this paragraph. The cabinet:~~

~~1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as BACT, and~~

~~2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as BACT after considering the evidence.~~

~~(c) Time of comparison.~~

~~1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:~~

~~a. The BACT requirements that applied at the time the control technology was installed, or~~

~~b. The current-day BACT requirements.~~

~~2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.~~

~~(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:~~

~~(a) The date that the permit or permit revision required by subsection (6) of this section is issued; or~~

~~(b) The date that the emissions unit's air pollution control technology is placed into service.~~

~~(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.~~

~~(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.~~

~~(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.~~

~~(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.~~

~~(6) Procedures for designating emissions units as clean units.~~

~~(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and~~

~~(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.~~

~~(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies;~~

~~(b) The effective date of clean unit designation.~~

~~1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;~~

~~(c) The expiration date of clean unit designation:~~

~~1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to BACT and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT;~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section; and~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (8) of this section.~~

~~(8) Maintaining the clean unit designation.~~

~~(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.~~

~~1. To ensure that the control technology continues to achieve emissions control comparable to BACT, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to BACT, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT.~~

~~3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.~~

~~4. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its~~

~~clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(9) Netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis, unless:~~

~~1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall also be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(10) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 22. PCP Exclusion Procedural Requirements. For a project to qualify for a pollution control project (PCP) exclusion, an owner or operator shall comply with the provisions of this section.~~

~~(1) To request a PCP designation for a project the owner or operator shall:~~

~~(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); or~~

~~(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in the definition at 401 KAR 51:001, Section 1(188)(a) to (f).~~

~~(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:~~

~~(a) An environmentally beneficial analysis.~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and~~

~~2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.~~

~~(b) An air quality analysis. The emissions increases from the project shall not:~~

~~1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:~~

~~(a) A description of the project;~~

~~(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases using the methodology in Section 1(4) of this administrative regulation that will result from the project;~~

~~(c) A copy of the environmentally beneficial analysis required by subsection (2)(a) of this section;~~

~~(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;~~

~~(e) A certification that the project shall be designed and operated in a manner that is consistent with:~~

~~1. The proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. The information submitted in the notice or permit application; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy; and~~

~~(f) Demonstration that the PCP shall not have an adverse air quality impact.~~

~~1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet, and~~

~~2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.~~

~~(4) Notice process for listed projects. The owner or operator:~~

~~(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and~~

~~(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.~~

~~(5) Permitting process for unlisted projects.~~

~~(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project consistent with 40 C.F.R. 51.160 and 51.161. These procedures shall include the cabinet providing the public with:~~

~~1. Notice of the proposed approval;~~

~~2. Access to the environmentally beneficial analysis and the air quality analysis; and~~

~~3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.~~

~~(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.~~

~~(6) Operational requirements. Upon installation of a PCP, the owner or operator shall comply with the requirements of this subsection.~~

~~(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:~~

~~1. Proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(b) Recordkeeping to prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:~~

~~1. The environmentally beneficial analysis;~~

~~2. The air quality impacts analysis; and,~~

~~3. The monitoring and other emissions records.~~

~~(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.~~

~~(d) Generation of emissions reduction credits.~~

~~1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the~~

~~PCP exclusion;~~

~~2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent;~~

~~3. For generating offsets, the reductions shall be federally enforceable; and~~

~~4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~Section 23.~~] Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 16(4) of this administrative regulation concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown and malfunction; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period;

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions will be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[~~(221)~~] or under the Act, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shutdown after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions,

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format or another acceptable format approved by the cabinet;

(i) A requirement for the owner or operator to submit the re-

ports required under subsection (13) of this section by the required deadlines; and

(j) Other requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii), or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and

imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.

3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions;

(v) Cost effective emissions control alternatives; and

(vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for such requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the in-

crease in emissions that cause the source's emissions to equal or exceed its PAL;

2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, exceeds the PAL; and

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years;

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet; and

b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (g) of this subsection, at the time of permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; or

2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically-valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period,

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy the deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, with a PAL that complies with the requirements of this section.

Section 21.[24.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "40 C.F.R. Part 51, Appendix W to Part 51 - Guideline on Air Quality Models, as published in the Code of Federal Regulations, July 1, 2003".

(b) "40 C.F.R. Part 58, Appendix B to Part 58 - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, as published in the Code of Federal Regulations, July 1, 2003".

(c) "40 C.F.R. Part 60, Appendix B to Part 60 - Performance Specifications, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3) Copies of the Code of Federal Regulations and the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 28, 2007 at 3 p.m.
CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the prevention of significant deterioration of ambient air quality (PSD), and applies to major stationary sources and major modifications constructing in areas designated as either attainment or unclassified.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal PSD program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no more stringent than the federal mandate, codified in 40 C.F.R. 51.166

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the list of exempted major stationary sources codified in 40 C.F.R Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. In addition, the amendment removes the existing standards and requirements for clean units (CU) and pollution control projects (PCP) that have been vacated at the federal level in a D.C. Court of Appeals decision.

(b) The necessity of the amendment to this administrative regulation: These regulatory revisions are necessary in order to implement the changes in Kentucky in response to changes in the federal rules.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky's federally-approved PSD State Implementation Plan (SIP) provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth.

(d) How the amendment will assist in the effective administration of statutes: The emergency administrative regulation is in effect for 180 days or until the identical ordinary administrative regulation becomes effective, whichever occurs first.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The amendment expands the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with this administrative regulation. This amendment affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements.

(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 additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry will increase and support the nation's efforts toward energy independence.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability and compliance requirements that are tiered in this administrative regulation are basically identical to the federal PSD and NSR rules.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7671q (Clean Air Act) provides the statutory mandate codified in 40 C.F.R. Part 51.166, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal PSD mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification will not cause emissions to increase by specific incremental amounts; that the source's emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS); and that the source will use best available control technology (BACT) to control emissions. The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is basically identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 Division for Air Quality will continue to implement and enforce the Prevention of Significant Deterioration (PSD) program in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224 20-100, 224.20-110, 224 20-120, 40 C.F.R. 51.166, U.S.C. 7401-7671q.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

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

STATEMENT OF EMERGENCY
401 KAR 51:052E

The nature of the emergency is the adoption of a recently finalized federal rulemaking by the United States Environmental Protection Agency (US EPA). (Federal Register, Volume 72, No. 83, Tuesday, May 1, 2007) The federal revisions involve changes to the "major stationary source" definition under 40 C.F.R. part 51, and the "major source" definition under 40 C.F.R., part 70, as these relate to the federal Prevention of Significant Deterioration (PSD), New Source Review (NSR) and Title V Operating Permit regulations. A change was made to the component term "chemical process plants" to specifically exclude all facilities that produce ethanol

through a natural fermentation process. The US EPA was concerned that, unless the federal regulations were revised, growth of the ethanol fuel industry would be stymied and the nation's efforts towards energy independence would be hampered. Ethanol, a clean-burning fuel that can be made from corn, is sold nationwide as a high-octane fuel that delivers improved vehicle performance, while reducing emissions, and improving air quality. By reducing foreign oil imports, ethanol creates American jobs and provides value-added markets to bolster agriculture and rural America. The US EPA predicts that the revised regulations will also allow for the construction of larger, more economically efficient ethanol plants with lower emissions of air pollutants per gallon of ethanol produced. Ordinary administrative regulations are not sufficient because Kentucky is a State Implementation Plan (SIP)-approved state, and has been granted delegation of authority for the federal Title V and PSD/NSR Programs. It is necessary to amend these administrative regulations in order for the Cabinet to have the authority to implement the changes in the federal regulations in Kentucky. Normal administrative regulation promulgation procedures could take as long as six (6) months to finalize. This delay could put Kentucky at an economic disadvantage with states that have the ability to immediately approve any federal change, whereby the effective date of the change for those states is the same as the federal effective date, July 2, 2007. This economic disadvantage could include the loss of federal and/or state funds that have been established as an incentive to promote the ethanol market, and thus cause Kentucky missed opportunities for locating these facilities in the Commonwealth. According to the United States Department of Agriculture, the federal incentives alone could add almost $1 billion to the bottom line of farm income across the nation. Kentucky is an ideal ethanol production market for farmers, who produce 166 million bushels of corn annually. These emergency regulations shall be replaced by ordinary administrative regulations, to be concurrently filed with the Regulations Compiler. The ordinary administrative regulations are identical to the emergency administrative regulations.

ERNIE FLETCHER, Governor
LLOYD CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Emergency Amendment)

401 KAR 51:052E. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 51, Subpart I, 51.165, 51.166(g), 52.21, 52.21(r), 60, 61, 81, Subpart D, 81.318, 42 U.S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410

STATUTORY AUTHORITY: KRS 224.10-100[~~, 40 C.F.R. 51.165~~], 42 U.S.C. 7401-7671q (Clean Air Act)

EFFECTIVE: September 28, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are neither different nor more stringent than the federal regulation 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or any project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) [~~subsections (3) or (4)~~] of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. [~~Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit as provided in Sections 11 and 12 of this administrative regulation, without causing the unit to lose its clean unit designation, an emissions increase shall not be deemed to occur.~~

~~4.~~] Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 to 2[3] of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1[~~(146)~~].

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11[~~14~~] of this administrative regulation.

[~~(4) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 13 of this administrative regulation.~~]

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in

calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

(a) Coal cleaning plants with thermal dryers;
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants, furnace process;
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
(u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 ug /m³	5 ug /m³	--	25 ug /m³	--
PM_{10}	1.0 ug /m³	5 ug /m³	--	--	--
Nitrogen Dioxide	1.0 ug /m³	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m³	--	2 mg/m³

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO_2), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. appendix W, "Guideline on Air Quality Models".

(4) For sources of NOx, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO_2) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs locating outside a designated ozone nonattainment area shall be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted under the applicable provisions of this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:
1. Meet an emissions limitation;
2. Meet a design, operational or equipment standard; or
3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 63, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NOx emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced, or offset, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NOx to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1;
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NOx.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be:

(a) The emissions limitations in effect at the time the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.

(c) Baseline actual emissions as defined in 401 KAR 51:001, Section 1[~~(20)~~], shall not be used for determining the baseline for emissions offsets.

(2) Credit for emissions offsets. Credit for emissions offset may be allowed for existing control that goes beyond the control required under 401 KAR Chapters 50 to 68 and existing federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by:

1. Obtaining emissions reductions of the air pollutant from the same source or other sources in the same nonattainment area; or

2. From sources in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if no applicable emissions limitation exists. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.

(c) If an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations may not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52.020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(202)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if requested and the applicant demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982, and if the owner or operator demonstrates that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated.

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review - applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution, or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

a. The emissions from the source will not exceed the allowable emissions;[~~, The emissions from the source will not exceed the allowable emissions;~~]

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to paragraph (b) of this subsection within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct, and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section. The cabinet shall follow the procedures at 40 C.F.R. 52.21(r) as in effect on July 1, 2003, to the extent that the procedures of 401 KAR 52.100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet may take into account the overriding factors of:

1. The cost of compliance;

2. The time necessary for compliance;

3. The energy and nonair quality environmental impacts of compliance; and

4. The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. [~~Clean Unit Test for Emissions Units that are Subject to LAER. For any emissions unit that is subject to LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined according to subsection (3) of this section, and~~

~~2. Before the expiration date of the clean unit designation as determined according to subsection (4) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with LAER in the permit for the unit; and~~

~~2. Alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revi-~~

~~sions if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with LAER in the permit for the unit, or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.~~

~~(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(g)1. For emissions units with PSD permits, the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for meeting LAER in subsections (3) to (8) of this section if:~~

~~a. The emissions unit has received a PSD permit that complies with BACT within the last ten (10) years; and~~

~~b. The emissions unit is located in an area that was redesignated as nonattainment for the relevant pollutant after the PSD permit is issued and before the SIP including the clean unit provisions become effective.~~

~~2. For these emissions units, the requirements for the LAER determination made under subsection (1)(c) of this section shall apply to the BACT permit terms and conditions.~~

~~3. The requirements of subsection (6)(a)3 of this section shall not apply to emissions units that qualify for clean unit status according to this paragraph.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.~~

~~2. Qualifying air pollution control technologies requirement. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:~~

~~a. The control technology shall achieve the LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;~~

~~b. The emissions unit shall not be eligible for the clean unit designation if the LAER determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and~~

~~c. The owner or operator shall have made an investment to install the control technology. An investment includes expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 12 of this administrative regulation.~~

~~1. An owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020 for an emissions unit that is requalifying for clean unit designation.~~

~~2. The permit shall require compliance with the current day LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.~~

~~(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day LAER shall be:~~

~~1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued, and~~

~~2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.~~

~~(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.~~

~~(4) Clean unit expiration. The date that the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current day LAER, the expiration date of the clean unit designation shall be:~~

~~1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:~~

~~1. Ten (10) years after the effective date, or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (6) of this section.~~

~~(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.~~

~~(b) The effective date of the clean unit designation.~~

~~1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of the clean unit designation.~~

~~1. If the exact expiration date is not known at the date the clean unit designation is initially recorded in the Title V permit, the permit shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date, and~~

~~3. If originally absent for the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with LAER and any physical or operational characteristics that formed the basis for the LAER determination.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.~~

~~(6) Maintaining the clean unit designation.~~

~~(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.~~

~~1. The clean unit shall comply with the emissions limitations or~~

~~work practice requirements adopted in conjunction with the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit;~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination;~~

~~3. The clean unit shall not emit above a level that has been offset.~~

~~4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and~~

~~5. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(7) Offsets and netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for generating offsets, unless:~~

~~1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(8) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 12. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to LAER. For an emissions unit that does not qualify as a clean unit under Section 11 of this administrative regulation but is achieving a level of emissions control comparable to LAER, the owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER according to subsection (3) of this section; and~~

~~2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER according to subsection (7)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.~~

~~(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit were never a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements of this paragraph.~~

~~1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:~~

~~a. Demonstrate that an emissions unit's control technology is comparable to LAER according to the requirements of subsection (3) of this section;~~

~~b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and~~

~~c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:~~

~~a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~b. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~3. Date of installation requirement.~~

~~a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.~~

~~b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.~~

~~(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 11 of this administrative regulation.~~

~~1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current day LAER.~~

~~2. The emissions unit shall meet the requirements in subsection (2)(a)1 and 2 of this section.~~

~~(3) Demonstrating control effectiveness comparable to LAER.~~

~~The owner or operator shall demonstrate that the emissions unit's control technology is comparable to LAER under the provisions of either paragraph (a) or (b) of this subsection.~~

~~(a) Comparison of the control technology to previous LAER determinations.~~

~~1. An emissions unit's control technology shall be presumed to be comparable to LAER if the control technology achieves an emissions limitation that is at least as stringent as one of the five best performing similar sources for which a LAER determination has been made within the preceding five (5) years and for which information has been entered into the RACT/BACT/LAER clearinghouse.~~

~~2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to LAER, the cabinet shall:~~

~~a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period; and~~

~~b. Compare this presumption to any additional LAER determinations of which the cabinet is aware.~~

~~(b) The substantially as effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER according to this paragraph. The cabinet:~~

~~1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as LAER, and~~

~~2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as LAER after considering the evidence.~~

~~(c) Time of comparison.~~

~~1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:~~

~~a. The LAER requirements that applied at the time the control technology was installed, or~~

~~b. The current day LAER requirements.~~

~~2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current day LAER requirements.~~

~~(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:~~

~~(a) The date that the permit or permit revision required by subsection (6) of this section is issued; or~~

~~(b) The date that the emissions unit's air pollution control technology is placed into service.~~

~~(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.~~

~~(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.~~

~~(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.~~

~~(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.~~

~~(6) Procedures for designating emissions units as clean units.~~

~~(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and~~

~~(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.~~

~~(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies.~~

~~(b) The effective date of clean unit designation.~~

~~1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of clean unit designation.~~

~~1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date.~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~3. If originally absent from the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to LAER and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, according to subsection (8) of this section.~~

~~(8) Maintaining the clean unit designation.~~

~~(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.~~

~~1. To ensure that the control technology continues to achieve emissions control comparable to LAER, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to LAER, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to LAER.~~

~~3. The clean unit shall not emit above a level that has been offset.~~

~~4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.~~

~~5. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the~~

~~emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one pollutant shall only affect the clean unit designation for that pollutant.~~

~~(9) Offsets and netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for offsets, unless:~~

~~1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires, or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall be enforceable as a practical matter.~~

~~(10) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 13. PCP Exclusion Procedural Requirements. For a project to qualify for a PCP exclusion, an owner or operator shall comply with the provisions of this section.~~

~~(1) To request a PCP designation for a project the owner or operator shall:~~

~~(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); or~~

~~(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f).~~

~~(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:~~

~~(a) An environmentally beneficial analysis.~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and~~

~~2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.~~

~~(b) Air quality analysis. The emissions increases from the project shall not:~~

~~1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP.~~

~~(a) A description of the project;~~

~~(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases that will result from the project;~~

~~(c) A copy of the environmentally beneficial analysis required by subsection (2)(a) of this section;~~

~~(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;~~

~~(e) A certification that the project shall be designed and operated in a manner that is consistent with:~~

~~1. The proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. The information submitted in the notice or permit application; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(f) Demonstration that the PCP shall not have an adverse air quality impact.~~

~~1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet.~~

~~2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.~~

~~(4) Notice process for listed projects. The owner or operator:~~

~~(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and~~

~~(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.~~

~~(5) Permitting process for unlisted projects.~~

~~(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project according to 401 KAR 52:020. These procedures shall include the cabinet providing the public with:~~

~~1. Notice of the proposed approval;~~

~~2. Access to the environmentally beneficial analysis and the air quality analysis; and~~

~~3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.~~

~~(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.~~

~~(6) Operational requirements. Upon installation of the PCP, the owner or operator shall comply with the requirements of this subsection.~~

~~(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:~~

~~1. Proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section, and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(b) Recordkeeping. To prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:~~

~~1. The environmentally beneficial analysis;~~

~~2. The air quality impacts analysis; and,~~

~~3. The monitoring and other emissions records.~~

~~(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.~~

~~(d) Generation of emissions reduction credits.~~

~~1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase or for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.~~

~~2. The owner or operator may generate a credit for the differ-~~

~~ence between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent.~~

~~3. For generating offsets, the reductions shall also be federally enforceable.~~

~~4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~Section 14~~] Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, where:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of such emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[~~(221)~~] or under the Act, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shutdown after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Re-

cords may be retained in an electronic format or another acceptable format approved by the cabinet;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Other requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level no greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source,

(iv) The cabinet's goal of promoting voluntary emissions reductions; and

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for such requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, at the time of permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated, or

2. If there is no correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70 6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, with a PAL that complies with the requirements of this section.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: September 14, 2007

FILED WITH LRC: September 28, 2007 at 3 p.m.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the nonattainment new source review (NSR) and applies to new construction or modification of major stationary sources in areas designated nonattainment for a specified pollutant

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal NSR program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no more stringent than the federal mandate, codified in 40 C.F.R. 51.165.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the list of exempted major stationary sources codified in 40 C.F.R. Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. In addition, the amendment removes the existing standards and requirements for clean units (CU) and pollution control project (PCP) that have been vacated at the federal level in a D.C. Court of Appeals decision.

(b) The necessity of the amendment to this administrative regulation: These regulatory revisions are necessary in order to implement the changes in Kentucky in response to changes in the federal rules.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky's federally-approved PSD/NSR State Implementation Plan (SIP) provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth.

(d) How the amendment will assist in the effective administration of statutes: The emergency administrative regulation is in effect for 180 days or until the identical ordinary administrative regulation becomes effective, whichever occurs first.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The amendment expands the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with this administrative regulation. This amendment affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements.

(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 additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry

will increase and support the nation's efforts toward energy independence.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability and compliance requirements that are tiered in this administrative regulation are basically identical to the federal PSD and NSR rules.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7671q (Clean Air Act); 42 U.S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410, provides the statutory mandate codified in 40 C.F.R. Part 52.21, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal NSR mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification of the source will not cause a net increase in pollution; neither will the source create a delay in attainment of the NAAQS; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is basically identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410, provides the statutory mandate codified in 40 C.F.R. Part 52.21.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
401 KAR 52:001E

The nature of the emergency is the adoption of a recently finalized federal rulemaking by the United States Environmental Protection Agency (US EPA). (Federal Register, Volume 72, No. 83, Tuesday, May 1, 2007) The federal revisions involve changes to the "major stationary source" definition under 40 C.F.R. part 51, and the "major source" definition under 40 C.F.R., part 70, as these relate to the federal Prevention of Significant Deterioration (PSD), New Source Review (NSR) and Title V Operating Permit regulations. A change was made to the component term "chemical process plants" to specifically exclude all facilities that produce ethanol through a natural fermentation process. The US EPA was concerned that, unless the federal regulations were revised, growth of the ethanol fuel industry would be stymied and the nation's efforts towards energy independence would be hampered. Ethanol, a clean-burning fuel that can be made from corn, is sold nationwide as a high-octane fuel that delivers improved vehicle performance, while reducing emissions, and improving air quality. By reducing foreign oil imports, ethanol creates American jobs and provides value-added markets to bolster agriculture and rural America. The US EPA predicts that the revised regulations will also allow for the construction of larger, more economically efficient ethanol plants with lower emissions of air pollutants per gallon of ethanol produced. Ordinary administrative regulations are not sufficient because Kentucky is a State Implementation Plan (SIP)-approved state, and has been granted delegation of authority for the federal Title V and PSD/NSR Programs. It is necessary to amend these administrative regulations in order for the Cabinet to have the authority to implement the changes in the federal regulations in Kentucky. Normal administrative regulation promulgation procedures could take as long as six (6) months to finalize. This delay could put Kentucky at an economic disadvantage with states that have the ability to immediately approve any federal change, whereby the effective date of the change for those states is the same as the federal effective date, July 2, 2007. This economic disadvantage could include the loss of federal and/or state funds that have been established as an incentive to promote the ethanol market, and thus cause Kentucky missed opportunities for locating these facilities in the Commonwealth. According to the United States Department of Agriculture, the federal incentives alone could add almost $1 billion to the bottom line of farm income across the nation. Kentucky is an ideal ethanol production market for farmers, who produce 166 million bushels of corn annually. These emergency regulations shall be replaced by ordinary administrative regulations, to be concurrently filed with the Regulations Compiler. The ordinary administrative regulations are identical to the emergency administrative regulations.

ERNIE FLETCHER, Governor

LLOYD CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Emergency Amendment)

401 KAR 52:001E. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100(5)
EFFECTIVE: September 28, 2007
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid Rain Program" means the national program for reducing SO_2 and NOx emissions established under 42 U.S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7671q.

(3) "Actual emissions" means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected states" means states that:

(a) Border Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Are situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined in KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined in KRS 224.01-010(3).

(11) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(13) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(14) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined in KRS 224.01-010.

(18) "Capital expenditure" is defined in 40 C.F.R. 60.2.

(19) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(20) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(22) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(24) "Designated representative" means a person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accordance with 40 C.F.R. 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official" means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source which:

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and

(c) Shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.

(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.

(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting

(32) "Equivalent method" means a method of sampling and analyzing for an air pollutant, that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a

source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) Standards or requirements of the Acid Rain Program;

(f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for temporary sources permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made.

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52.040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" means a stationary source or a group of stationary sources that emits or has a potential to emit at or above a major source threshold and:

(a) For HAPs:

1. Is located within a contiguous area;

2. Is under common control;

3. Includes all fugitive HAP emissions in determining if the source is major; and

4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:

a. Oil or gas exploration or production wells and the associated equipment; or

b. Pipeline compressors or pump stations; and

(b) For regulated air pollutants other than HAPs:

1. Is located on one (1) or more contiguous or adjacent properties;

2. Is under common control;

3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e , all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and

4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:

a. Coal cleaning plants (with thermal dryers);

b. Kraft pulp mills;

c. Portland cement plants;

d. Primary zinc smelters;

e. Iron and steel mills;

f. Primary aluminum ore reduction plants;

g. Primary copper smelters;

h. Municipal incinerators capable of charging more than 250 tons of refuse per day;

i. Hydrofluoric, sulfuric, or nitric acid plants;

j. Petroleum refineries;

k. Lime plants;

l. Phosphate rock processing plants;

m. Coke oven batteries;

n. Sulfur recovery plants;

o. Carbon black plants (furnace process);

p. Primary lead smelters;

q Fuel conversion plants;

r. Sintering plants;

s. Secondary metal production plants;

t. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140,

u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;

v. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;

w. Taconite ore processing plants; .

x. Glass fiber processing plants;

y. Charcoal production plants;

z. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).

(46) "Major source threshold" means PTE:

(a) For HAPs:

1. Ten (10) tons per year or more of a single HAP;

2. Twenty-five (25) tons per year or more of combined HAPs; or

3. A lesser quantity that the U.S. EPA establishes in a final rulemaking; or

(b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:

1. For ozone nonattainment areas:

a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;

b. Fifty (50) tons per year or more in areas classified as serious;

c. Twenty-five (25) tons per year or more in areas classified as severe; or

d. Ten (10) tons per year or more in areas classified as extreme;

2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels; or

3. Seventy (70) tons per year or more of particulate matter (PM_{10}) for PM_{10} nonattainment areas classified as serious.

(47) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(48) "Marginal nonattainment county" or "marginal nonattain-

ment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(51) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(52) "Modification under Title I of the Act" means a change at a facility that would constitute a modification under 42 U.S.C. 7470 to 7492 or 42 U.S.C. 7501 to 7515.

(53) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(54) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(55) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design where:

(a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation is enforceable as a practical matter; and

(b) This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for forty-five (45) day review period.

(58) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 68.

(59) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411;

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(64) "Shutdown" means the cessation of an operation.

(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard promulgated in the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(67) "Start-up" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, which has been approved by the U.S. EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

(72) "Title V permit" means a permit issued pursuant to 401 KAR 52.020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.

(73) "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f

(Title V of the Act).

(74) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B

(75) "tpy" means ton per year.

(76) "U.S. EPA" means the U.S. Environmental Protection Agency.

(77) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).

(78) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 28, 2007 at 3 p.m.
CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 52.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in 401 KAR Chapter 52.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions regulation assists the public and the regulated community by defining the terms used in 401 KAR Chapter 52.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the definitions to mirror recent amendments at the federal level (72 Fed. Reg. 24077, May 1, 2007). It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment revises the definition of terms used in Kentucky's Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are based upon federal revisions affecting Kentucky's PSD and NSR regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendments will provide the definitions of terms used in 401 KAR Chapter 52.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation does not directly impact individuals, organizations, or state and local governments.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation does not directly impact individuals, organizations, or state and local governments.

(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 regulation does not directly impact individuals, organizations, or state and local governments.

(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 costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits related to this regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This regulation will not require an increase in fees or funding in order to implement its provisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this regulation provides the definitions of terms for 401 KAR Chapter 52 and imposes no requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation. However, recent changes in the federal PSD/NSR Program make it necessary to revise the regulation in order to ensure program parity.

2. State compliance standards. The state compliance standards are found in KRS 224.01-010, 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this regulation. However, changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no requirements because it only provides definitions of terms used in 401 KAR Chapter 52.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

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 Division for Air Quality implements this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5) authorizes the cabinet to promulgate regulations for the prevention, abatement, and control of air pollution. This regulation simply defines the terms used in 401 KAR Chapter 52 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

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

STATEMENT OF EMERGENCY
900 KAR 7:020E

This emergency administrative regulation, 900 KAR 7:020E, the Kentucky e-Health Corporation, is necessary to ensure compliance with provisions of a federal grant. The creation of a public-private nonprofit Kentucky e-Health corporation (KeHC) is integral to the implementation of the Kentucky Health Information Partnership (K-HIP). Each are required under the two (2) year $4.9 million federal Medicaid Transformation Grant awarded in February 2007. Due to the compressed timeline involved with the grant and the need for immediate action by the Kentucky e-Health corporation, an emergency filing of this regulation is critical to the successful progress of both the KeHC and the K-HIP project. This emergency administrative regulation is also necessary to implement the provisions of HB 185 enacted in March 2007 that give the Kentucky e-Health Network Board the authority to create a nonprofit corporation and to promulgate regulations necessary for its implementation. On August 21, 2007, the Kentucky e-Health Network Board approved the regulation and articles of incorporation for the Kentucky e-Health Corporation. The board requested that the e-Health Corporation be formed as soon as possible. An ordinary administrative regulation would delay compliance with federal grant when timing is critical and hamper the work of the Kentucky e-Health Network Board and the Cabinet for Health and Family Services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Emergency Administrative Regulation)

900 KAR 7:020E. Kentucky e-Health Corporation.

RELATES TO: KRS 216.261, 216.263, 216.265, 216.267
STATUTORY AUTHORITY: KRS 216.267
EFFECTIVE: September 18, 2007
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.267 allows the e-Health board to establish a public or nonprofit e-Health Corporation to facilitate public-private collaboration in the implementation and development of the Kentucky health network. This administrative regulation establishes membership, terms, organization, and duties for the Kentucky e-Health Corporation.

Section 1. Organization. (1) The Kentucky e-Health Corporation (corporation) is created as a nonprofit organization and is attached to the Kentucky e-Health Network Board for oversight and governance purposes.

(2) State funding shall come through the Kentucky e-Health Network Board and the Cabinet for Health and Family Services to the nonprofit Kentucky e-Health Corporation.

(3) The Kentucky e-Health Corporation may receive:

(a) Public funding;

(b) Private funding;

(c) Charitable gifts;

(d) Federal grants and contracts; and

(e) Foundation grants.

(4) All existing duties, responsibilities, functions, personnel, programs, funds, obligations, records, and real and personal property of the Kentucky e-Health Corporation shall be under the authority and control of the Kentucky e-Health Network Board and the Cabinet for Health and Family Services should the Kentucky e-Health Corporation dissolve.

Section 2. Board of Directors Membership. (1) The Kentucky e-Health Network Board shall appoint the e-Health Corporation Board of Directors from a list of candidates forwarded by stakeholders.

(2) The corporation's Board of Directors shall consist of fourteen (14) voting members from public and private sectors including:

(a) Kentucky e-Health Network Board cochair, or a designee, from the University of Kentucky, who initially shall serve as cochair of the corporation;

(b) Kentucky e-Health Network Board co-chair, or a designee, from the University of Louisville, who initially shall serve as cochair of the corporation;

(c) One (1) member from the Kentucky Health Information Partnership Advisory Subcommittee;

(d) One (1) members from the Cabinet for Health and Family Services representing the Department for Medicaid Services;

(e) One (1) member from the Cabinet for Health and Family Services representing the Department for Public Health;

(f) Two (2) members representing physicians or other health care practitioners in active practice in the Commonwealth;

(g) Two (2) members representing payors of health care;

(h) One (1) member representing employers who purchase health care benefits for employees;

(i) Two (2) members representing hospitals or other health care facilities;

(j) One (1) member representing consumers of health care; and

(k) One (1) member representing local or regional health information exchange organizations providing services to residents of the Commonwealth.

(3) The appointed members of the e-Health Corporation Board of Directors shall hold their offices for a term of two (2) years and may be reappointed to one (1) additional term.

(4) Vacancies, when they occur during a term of office, shall be filled for the unexpired term in the manner prescribed for original appointment.

(5) If any member misses more than two (2) consecutive meetings of the board, then that position shall be declared vacant and filled in accordance with this section.

Section 3. Board Chairperson. (1) Cochairs of the Kentucky e-Health Network shall serve as corporation board chairs for one (1) year, with a new chair elected by the Kentucky e-Health Corporation Board of Directors for a term of one (1) year. A chairperson may be re-elected to a second consecutive term.

(2) The board chair shall:

(a) Oversee preparation of all minutes, records, and orders of the Kentucky e-Health Corporation;

(b) Be responsible for the preservation of all documents; and

(c) Preside over meetings of the board.

Section 4. Quorum. (1) Eight (8) members of the board shall constitute a quorum.

(2) A quorum shall be present in order for the board to take action, other than adjourn.

Section 5. Voting. (1) Decisions of the e-Health Corporation shall be made by majority vote of the members of its Board of Directors, except where sixty (60) percent approval is needed.

(2) A sixty (60) percent majority is required for matters relating to:

(a) Incurring debt;

(b) Initiating new lines of business or capital projects; or

(c) Changing the bylaws of the corporation. The e-Health Corporation shall submit all bylaws changes to the Kentucky e-Health Network Board for review and approval.

Section 6. Reimbursement. (1) Members of the corporation shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties.

(2) Reimbursement shall be consistent with rules established by the Finance and Administration Cabinet for public board members.

Section 7. Duties. (1) The Kentucky e-Health Corporation shall serve as the operational arm of the Kentucky e-Health Board responsible for managing the development and operations of the Kentucky e-Health Network. The corporation may:

(a) Hire staff;

(b) Purchase:

1. Software;

2. Hardware;

3. Equipment; and

4. Supplies;

(c) Offer related e-Health technologies and services;

(d) Issue Requests for Proposal and execute contracts with vendors for the partnership;

(e) Hold governing board and advisory body meetings periodically with members from each of the partners and affected stakeholders;

(f) Partner with:

1. For-profit entities;

2. Nonprofit entities; and

3. Governmental entities;

(g) Enter into business agreements with partnering organizations;

(h) Accept and collect funds to carry out the responsibilities given to it by the Kentucky e-Health Network Board; and

(i) Manage development and implementation of the Kentucky Health Information Partnership project.

(2) The corporation is required to provide quarterly financial and programmatic reports to the Kentucky e-Health Network Board and the Cabinet for Health and Family Services no later than sixty (60) days after the end of a quarter.

(3) The corporation shall adopt bylaws providing for the call of its meeting and operating procedures. Bylaws may be amended at any regular or special meeting of the board, provided that the amendment has been submitted in writing in advance of the meeting at which it is to be considered.

(4) The corporation shall submit, in a format prescribed by the e-Health Network Board, an annual report by September 30 following the end of each state fiscal year to the:

(a) Governor;

(b) Secretaries of the Finance and Administration Cabinet and Cabinet for Health and Family Services;

(c) Interim Joint Committee on Appropriation and Revenue;

(d) Interim Joint Health and Welfare Committee;

(e) Legislative Research Commission; and

(f) Kentucky e-Health Network Board.

Section 8. Advisory Subcommittees. (1) The e-Health Corporation may establish one (1) or more advisory subcommittees for large, multi-year e-health projects.

(2) Advisory subcommittees shall be charged with advising the e-Health Corporation Board of Directors and Kentucky e-Health Network Board on the direction, design, and implementation of designated technology projects and services for providers, clinicians, and consumers.

(3) Advisory subcommittees shall consist of variety of stakeholders, including data suppliers and users that will advise on the functionality, development, and design of technology and services.

(4) Advisory subcommittees will bring recommendations and report to the corporation Board of Directors. The board chair shall appoint one (1) member of the advisory subcommittee to serve as the subcommittee chair who shall serve as the voting member on the e-Health Corporation Board of Directors

(5) The Kentucky e-Health Corporation Board of Directors shall appoint six (6) to ten (10) advisory board members including:

(a) Up to six (6) members from data suppliers, with a minimum of one (1) member representing each organization supplying data for the technology project; and

(b) Up to four (4) members representing data users.

TRUDI L. MATTHEWS, Senior Policy Advisor
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: September 17, 2007

FILED WITH LRC: September 18, 2007 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trudi Matthews

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes membership, terms, organization, and duties for the Kentucky e-Health Corporation. The Kentucky e-Health Corporation will be a public-private nonprofit corporation operating under the. auspices of the Kentucky e-Health Network Board

(b) The necessity of this administrative regulation: The Kentucky e-Health Corporation will be a public-private, nonprofit corporation in Kentucky responsible for facilitating and implementing public-private partnerships needed to develop and implement the Kentucky e-Health network and the functions defined in 216.267.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 216.267 authorizes the Kentucky e-Health Board to review and select a business model to be used to implement the Kentucky e-Health Network. A nonprofit corporation model was selected to facilitate public-private collaboration. The Kentucky e-Health Corporation is created as a nonprofit organization and is attached to the Kentucky e-Health Network Board for oversight and governance purposes. This action is consistent with the language found in HB 185 from the 2007 legislative session.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These regulations establish the governance structure of the Kentucky e-Health Corporation with oversight of the Kentucky e-Health Network Board, the Cabinet for Health and Family Services, Finance and Administration Cabinet and the General Assembly in accordance with 216.267. The Kentucky e-Health Network Board cochairs will serve as the initial cochairs of the Kentucky e-Health Corporation. The makeup of the directors of the Kentucky e-Health Corporation mirrors closely the makeup of the e-Health Network Board and there is a regular accountability mechanism through quarterly and annual reporting required under the statute.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will directly affect the Kentucky e-Health Network Board and the Cabinet for Health and Family Services. Indirectly, it potentially will have an impact on the health delivery system across the Commonwealth.

(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 a minimal cost, approximately $30,000 to the cabinet to provide administrative support for the e-Health Corporation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky e-Health Network (KeHN) Board was created to lead the development and implementation of an e-Health Network in Kentucky. The KeHN Board, which is attached to the Cabinet for Health and Family Services, quickly ascertained the need to establish a public-private nonprofit entity to facilitate partnerships between private health care entities and public organizations such as state government and the universities. As nearly every other state has recognized, a nonprofit corporation is a necessary agent for affecting change, bringing consensus from diverse groups, financing jointly large technology projects and ensuring the efficient management and operation of the Kentucky e-Health Network. The formation of the Kentucky e-Health Corporation is a minimal cost to CHFS, but the benefits are enormous in the greater efficiency and effectiveness of operations and funding for e-health activities in Kentucky.

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

(a) Initially: Initially, it is anticipated that staffing and meeting expenses will cost CHFS about $30,000. The cabinet will use funds from the federal Medicaid Transformation Grant that CHFS received in February 2007 to cover these costs, in accordance with the approved grant proposal.

(b) On a continuing basis: Over time, the e-Health Corporation will be able to sustain its operational costs by offering e-Health related services to the state and private sector companies as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement this regulation is from the Federal Medicaid Transformation Grant awarded to Kentucky in February 2007.

(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 increase in fees or funding needed to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established either directly or indirectly in this regulation or the authorizing statutes.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because it applies only to the e-Health Corporation.

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 e-Health Network Board and Cabinet for Health and Family Services will be directly impacted. Indirectly, it potentially will affect the health delivery system across the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.267

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? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect. However, because the e-Health Corporation will eventually generate revenue through e-Health related services, this regulation will ensure that the public share of expenses for creating a statewide e-Health Network will be lower than if the Kentucky e-Health Corporation did not exist.

(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 additional revenue generated for state or local government for the first year that this administrative regulation is in effect. It is possible that the revenues generated by the Kentucky e-Health Corporation from its services can be used to sustain and expand the Kentucky e-Health Network faster and more effectively.

(c) How much will it cost to administer this program for the first year? In the first year, it is estimated that $30,000 in staffing costs and meeting expenses will be required, which will be covered by the federal Medicaid Transformation Grant Funding.

(d) How much will it cost to administer this program for subsequent years? Basic operating costs will increase in subsequent years, but the e-Health corporation will become a self-sustaining, nonprofit entity.

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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, October 9, 2007)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 164.020(8) requires the council to set** [~~Pursuant to KRS 164.020(8) the council sets~~] the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all students have available to them an opportunity for postsecondary education appropriate to their interests and abilities. This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions. **The college readiness standards established in this administrative regulation shall not release institutions from the requirements contained in 13 KAR 2:060, degree program approval; equal opportunity goals.**

Section 1. Definitions. (1) "Adult student" means a student who is twenty-one (21) years of age or older.

(2) "Council" is **defined by KRS 164.001(7)** [~~the Council on Postsecondary Education established by KRS 164.011~~] [~~defined by KRS 164.001(7)~~].

(3) **"Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.**

~~(4) "Foreign language" means a language that is not the primary language used at home.~~

~~(4)~~] "Institution" or "institutions" means a state-supported postsecondary education institution as defined in KRS 164.001(11) [~~KRS 164.001(10)~~].

(5) [~~(4)~~][~~(5)~~] "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(11).

[~~(6)~~][~~(6)~~] [~~"Program of Studies" means the document "Program of Studies for Kentucky Schools: Grades Primary-12" adopted~~] [~~published~~] [~~by the Kentucky Board of Education~~]

[~~(6)~~][~~(7)~~] [~~"Developmental course~~][~~Remedial course~~][~~" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree~~]

(6)[~~(7)~~][~~(8)~~] "System-wide standard" means an ACT Assessment sub-score [~~a score~~] of eighteen (18) in [~~or above on a mathematics,~~] English, nineteen (19) in mathematics, or twenty-one (21) in reading [~~or reading subscale of the ACT Assessment~~].

Section 2. Minimum Qualifications for Institutional Admission as First-time Students [~~Freshmen~~]. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant seeking to enter a community and technical college shall have fulfilled the minimum requirements for admission to a degree program established by the Kentucky Community and Technical College System consistent with this administrative regulation [~~at a community or technical college or to a community college-type program at a university~~] if the applicant has:

1. Graduated from a public high school or a certified nonpublic high school, or

2. Earned a high school general equivalency certificate (GED).

(b) The Kentucky Community and Technical College System may **choose to** exempt **students** [~~a student~~] who **are** [~~is~~] eligible to pursue a GED from the requirements of paragraph (a) of this subsection **if the KCTCS publishes the exemption policy in the student catalog**.

(c) An applicant to a community-college type program at a university shall take the ACT Assessment.

1. Have satisfied the minimum requirements for admission to a two (2) year degree program established by the admitting institution consistent with this administrative regulation; and

2. Take the ACT Assessment.

(2)(a) Except as provided in paragraph (b) of this subsection, **an** [~~and~~] applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:

1. Graduated from a public high school or a certified nonpublic high school;

2. Completed the precollege curriculum established in Section 3 of this administrative regulation; and

3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency certificate (GED) or who is a graduate of a noncertified nonpublic high school, including a home school, may be admitted to a baccalaureate program at a university by taking the ACT Assessment and by scoring at levels [~~a level on the subtests~~] established by a [~~the~~] university. [~~An applicant shall satisfy the provisions of paragraph (a)2 of this subsection by taking the ACT Assessment and by scoring at levels~~] [~~on the ACT Assessment subtests that are~~] [~~established by a university~~].

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a university may substitute the SAT for the ACT Assessment. The ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, or ACCUPLACER Testing Program may be substituted for the ACT Assessment requirement for an adult student [~~students~~].

(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic school and completed a course of study. Noncertified nonpublic schools shall include a home school.

(5)[~~(a)~~] A nonresident seeking admission to a baccalaureate degree program at a university shall complete:

(a)[~~1.~~] The ACT recommended college core courses for the precollege curriculum which is listed in the Benefits of a High School Core Curriculum, ACT 2006 [~~ACT High School Profile Report, High School Graduating Class 1999~~]; or

(b)[~~2.~~] A college preparatory curriculum comparable to Kentucky's precollege curriculum **established in Section 3 of this administrative regulation**.

[~~(b) Except as provided in Section 3(10)(e) of this administrative regulation, a nonresident shall meet the same minimum qualifications for admission as a Kentucky resident as established in subsections (1) through (4) of this section.~~]

(6)(a) A university may, under extenuating circumstances, admit a student who has not met the testing requirements of subsection (2)(a)3 of this section if the university has a written policy defining extenuating circumstances.

(b) If a university admits a student under paragraph (a) of this subsection, the student shall satisfy the provisions of subsection (2)(a)3 of this section during the first semester of enrollment.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

Section 3. Precollege Curriculum. (1) [~~Effective for the fall semester of 2000, an applicant to a baccalaureate degree program at an institution shall complete twenty (20) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study and is based on the Program of Studies:~~

~~(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English.~~

~~(b) Three (3) units of high school study in mathematics, includ-~~

~~ing algebra I, algebra II and geometry. This mathematics requirement may be met by completing the integrated mathematics series consisting of three (3) units.~~

~~(c) Two (2) units of high school study in science, biology I and either chemistry I or physics I. At least one (1) science course shall be a laboratory course.~~

~~(d) Two (2) units of high school study in social studies, that shall include world civilization and either U.S. history or AP American history.~~

~~(e) A college bound student is encouraged to take, as part of his elective course selection, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy.~~

~~(f) A substitution shall not be made for any course identified in this subsection unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.~~

~~(2) Effective for the fall semester of 2002,~~] An applicant to a baccalaureate degree program at an institution shall complete twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study; [~~and is based on the Program of Studies~~][-]

(a) Four (4) units of high school study in English/language arts, specifically[~~,~~] including English I, English II, English III, and English IV or AP English;[-]

(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, three (3) units of high school study in mathematics, including algebra I, algebra II, and geometry.

1. An integrated, applied, interdisciplinary, or technical/occupational course may be substituted for a traditional Algebra I, Geometry, or Algebra II course if the course meets the appropriate content standards described in the Program of Studies, **which is incorporated by reference in 704 KAR 3:303** [~~and the Core Content for Assessment both incorporated herein by reference~~].

2. [~~A student may substitute for algebra I~~] A mathematics course whose content is more rigorous **than Algebra I shall be accepted as a substitute for Algebra I** [~~than that described in the Program of Studies~~].

3. **An** [~~2.~~] Algebra I **course** may be taken prior to high school and **shall be** counted as a required mathematics course if the academic content of the course is at least as rigorous as the appropriate high school algebraic thinking standards outlined in the Program of Studies, **which is incorporated by reference in 704 KAR 3:303.** [~~and the Core Content for Assessment~~] [~~that listed in the Program of Studies and Core Content for Mathematics, High School Version 4.1 2006 herein incorporated by reference~~

~~3. Algebra II shall include the content and skills described in the Core Content for Mathematics Assessment and shall be at least as rigorous as that listed in the Program of Studies and the Core Content for Mathematics, High School Version 4.1 2006~~]

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course;[-]

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization;[-]

(e) One-half (1/2) unit in health education;[-]

(f) One-half (1/2) unit in physical education;[-]

(g) One (1) unit in history and appreciation of visual and performing arts; **and**[-]

(h) [~~Effective with the fall semester 2004, an applicant shall~~

~~1. Complete~~] Two (2) units in the same foreign language unless:

1. The applicant's local school has[~~:~~

~~1.~~][~~a.~~] diagnosed the student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1:280 or 707 KAR 1:310; and

2. **Either:**

a. The school bus [~~b.~~] determined that the learning disability precludes the student from successfully completing a foreign language course; or

b. The applicant demonstrates [~~3.~~] [~~2. Demonstrate~~] linguistic competence and awareness of a foreign language at least equivalent to two (2) years of high school language[~~; or~~

~~3. Complete two (2) units of English as a second language (ELS)~~].

[~~(3)(a) Beginning with fall semester 2002 through the academic year 2003-2004, a student shall, in addition to the requirements of subsection (2) of this section, take seven (7) electives. Five (5) of the seven (7) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in an approved area:~~

~~1. Social studies.~~

~~2. Science.~~

~~3. Mathematics.~~

~~4. English/language arts.~~

~~5. Arts and humanities.~~

~~6. Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.~~

~~7. Foreign language.~~

~~8. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. The academic content shall be more rigorous than the introductory level as described in 703 KAR 4:060.~~

~~9. A college-bound student is encouraged to take, as part of an elective course selection, additional coursework in mathematics, sciences, and arts.~~

~~(b) Beginning with the fall semester 2004,~~]

(2) In addition to the requirements of subsection (1)[~~(2)~~] of this section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies;[.]

(b) Science;[.]

(c) Mathematics;[.]

(d) English/language arts;[.]

(e) Arts and humanities;[.]

(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health;[.]

(g) Foreign language; **or**[.]

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. [~~an approved area of study set forth in paragraph (a)1 through 8 of this subsection.~~]

(3)(a)[(4)(a)] [~~A student may substitute~~] An integrated, applied, interdisciplinary, or higher level course **shall be substituted** [~~within a program of study~~] for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated mathematics courses **shall** [~~are intended to~~] be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence.

(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4)[~~(5)~~] An institution may establish additional requirements to supplement this minimum academic preparation.

(5)[~~(6)~~](a) **An institution shall accept** a waiver of a required precollege curriculum course [~~may be justified~~] if:

1. A student is physically unable to complete a course because of a physical handicap;

2. A student's handicapping condition **meets the requirements of 704 KAR 3:305, Section 3(2)** [~~is verified through appropriate documentation~~]; and

3. The school district superintendent or designee [~~(or designee)~~] verifies that a student's handicapping condition will prevent the student from completing the course in question.

(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local school may substitute another course in accordance with 704 KAR 3:305, Section 3(2)[~~2(3)~~].

~~(6)[(7) A course selection is tied to the Program of Studies and the individual course descriptions contained in that document.] [For guidance in the selection of a specific course, a counselor may consult the] [program of studies and] [Council materials on the precollege curriculum.~~

~~(7)]~~ An[~~(8) Each~~] Institution shall determine whether an applicant has met these minimum academic preparation requirements.

~~(7)[(8)][(9)]~~ The precollege curriculum requirement shall apply to:

(a) A first-time student [~~freshman~~] pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate-degree level to baccalaureate-degree level; or [~~and~~]

(d) A student who, transferring from another institution, has been admitted to baccalaureate-degree status by the receiving institution.

~~(8)(9)[(10)]~~ The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate-degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2 00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A nonresident student because he or she is subject to the provisions of Section 2(5) **of this administrative regulation**; or

(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university shall have the option of admitting conditionally a first-time student [~~freshman~~] applicant to a baccalaureate degree program who has not met the requirements of Section 3 of this administrative regulation. A first-time student [~~freshman~~] admitted conditionally shall remove or otherwise satisfy [~~all~~] academic deficiencies in a manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provisions in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate-degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a community college-type program in a university shall be assessed and reported to the Council on Postsecondary Education.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) At the discretion of the institution, a person who does not meet college entrance requirements, including high school students, may enroll in college courses as a nondegree student.

Section 5. Transfer Students. (1) The council's General Education Transfer Policy and **Implementation Guidelines, Incorporated by reference** [~~program specific agreements~~][~~baccalaureate program transfer frameworks policy~~] shall direct [~~provide the basis for~~] an institution's policy on the acceptance of transfer credits. [~~The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for admission of transfer students to an institution and for the acceptance of transfer credits.~~]

(2) An [~~A state-supported~~] institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) An institution, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.

Section 6. Assessment and Placement of Students. (1) The **Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics** [~~assessment and placement policy of the council~~] [~~shall be effective with the fall semester 2001 and~~] shall apply to:

(a) A first-time student [~~freshman~~] enrolled in an associate or baccalaureate degree program or a certificate or diploma program at an institution;

(b) A student who transfers from a degree program at one (1) institution into a [~~baccalaureate~~] degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;

(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English;

(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student shall be exempt from system-wide mandatory assessment and placement policies.

(3) Except as provided in subsection (11) of this section, an institution [~~A university~~] shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. An institution [~~A university~~] may accept scores on the SAT in lieu of the ACT Assessment for placement in college-level courses.

(4) **If** [~~An institution shall, where~~] a student it determined to have not met the system wide standards **an institution shall** for readiness, use a placement exam [~~A university may use an institutional placement exam as a supplement to the ACT Assessment~~] to help place a student in the proper course.

(5) An institution[~~(4)(a) A university~~] shall place a student who scores below the system-wide standard in mathematics, English, or reading in an:

(a)[~~1.~~] Appropriate developmental [~~remedial~~] course in the relevant discipline; or

(b)[~~2.~~] Entry-level college course, if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that usually associated with an entry-level course.

[~~(b) A university may set a cut-off score above the system-wide standard to place a student.~~]

(6) Effective with the fall semester of 2009, an institution shall satisfy the provisions of subsection (5)[~~(4)~~] of this section by placing a student in the appropriate developmental course [~~or discipline~~] or entry-level college course in the first term that a student is enrolled.

(7)(a) A student shall not be required to enroll in a developmental course in English if the student has a sub score on the ACT Assessment of eighteen (18) or higher in English. The student shall be permitted to enroll in a credit-bearing writing course.

(b) A student shall not be required to enroll in a developmental course in Mathematics if the student has a sub score on the ACT Assessment of nineteen (19) or higher in Mathematics.

1. A student who scores between nineteen (19) and twenty-one (21) shall be permitted to enroll in a credit-bearing mathematics course.

2. [~~1.~~] A student who scores twenty-two (22) through twenty-six (26) on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing algebra course.

3. [~~2.~~] A student who scores twenty-seven (27) or higher on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing calculus course.

(c) A student who **has been admitted to an institution and who demonstrates a level of competence by achieving the standards established in the Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics, which is incorporated by reference, and the scores contained in paragraph (a) or (b) of this subsection shall be guaranteed placement in credit-bearing coursework** [~~demonstrates a level of competence by achieving the standards in the Kentucky State-~~

~~wide College Readiness Standards (incorporated by reference), and the scores contained in paragraph (a) or (b) is guaranteed placement in credit-bearing coursework, but is not guaranteed admission to a university~~].

(8)[~~(5)~~] An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The ACCUPLACER Testing Program; or

(e) An institutional placement test.

(9) An institution[~~(6) A university~~] shall be responsible for determining the remediation required including the number of remedial courses required, if necessary.

(10) [~~Provided, however that~~] Effective with the fall semester of 2009, an institution shall enroll a student who scores below the statewide standards in an appropriate developmental or entry-level course [~~supplemental courses~~] [~~consecutively~~] until rediness for credit-bearing courses has been demonstrated. An institution shall [~~also~~] ensure that a student who completes a developmental or supplemental course shall [~~immediately~~] enroll in a credit-bearing course in that subject or discipline, or in the case of reading, appropriate course work requiring college-level reading skills.

(11)[~~(7)~~](a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills. [~~This requirement also shall apply to the Lexington Community College.~~]

(b) [~~KCTCS shall ensure that the same campus placement tests are used by the Technical College Branch and the Community College Branch to assess degree-seeking students.~~

~~(c)~~ KCTCS [~~and the Lexington Community College~~] may use the ACT Assessment scores or SAT scores to place a student into an appropriate developmental course.

(12)[~~(8)~~] The KCTCS [~~and the Lexington Community College~~] shall place a degree-seeking student who scores below the system-wide standard in mathematics, English, or reading in an:

(a) Appropriate developmental [~~remedial~~] course in the relevant discipline; or

(b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

(13)[~~(9) KCTCS shall develop guidelines for use at the community and technical colleges that will determine the remediation required in mathematics, English, or reading based upon placement test scores. This requirement also shall apply to the Lexington Community College.~~

~~(10)(a) KCTCS shall develop assessment and placement policies for students who enroll in certificate and diploma programs.~~

~~(b) For each certificate and diploma program, KCTCS shall determine the proper cut-off scores for placing students and the standards for exiting remedial instruction.~~

~~(c)~~] KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading. **The list of certificate and diploma programs that exempt students from the required assessment and placement in mathematics, English, and reading shall be published by the KCTCS in the student catalog.**

(14)[~~(11) Effective with the spring semester 2001,~~] an institution shall report to the council data that monitors the performance of first-time students [~~freshmen~~] in developmental [~~remedial~~] and entry-level courses. The core elements of the first-time students [~~freshmen~~] performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores,

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental [~~remedial~~], entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in developmental [~~remedial~~] and entry-level courses.

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

(a) [~~The "Program of Studies for Kentucky Schools: Grades Primary-twelve (12) (revised 2006)][, Grades Primary-12", 2006] [1998][, Kentucky Department of Education]~~[,

~~(b)~~] "Core Content for **Mathematics, High School"** [~~Mathematics~~] [~~"Assessment"~~], Version 4.1, 2006, [~~3.0, 1999~~], Kentucky Department of Education;

(b) [~~(c)~~] "General Education Transfer Policy **and Implementation Guidelines**", 2004 [~~1995~~], Council on Postsecondary Education;

(c)[~~(d)~~] "Benefits of a High School Core Curriculum", 2006, **ACT; and** [~~(ACT, 2006).~~] [~~"Baccalaureate Program Transfer Frameworks", 2000-2001, Council on Postsecondary Education; and~~]

(d) "Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics", 2004;

[~~(e) "Kentucky Statewide College Readiness Standards; and~~

~~(f) 704 KAR 3:305, Minimum Requirements for High School Graduation.~~] [~~"ACT High School Profile Report: High School Graduating Class 1999", ACT, Inc.~~]

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THOMAS D. LAYZELL, President
DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: August 14, 2007

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PERSONNEL CABINET
Office of the Secretary
(As Amended at ARRS October 9, 2007)

101 KAR 2:120. Incentive programs.

RELATES TO: KRS **18A.202, 199.555(1)** [~~18A.110(1)(d), 18A.202~~]

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), 18A.202(1) [~~, EO 98-1443~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement **work-related** [~~work-related~~] incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. [~~EO 98-1443 requires the secretary to establish a state employee adoption benefit program. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program~~].

Section 1. Employee Suggestion System. (1) Administration. An employee with status in the classified service may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

(a)1. The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall:

a.[~~develop procedures to~~] Ensure proper evaluation of each suggestion;

b. Review and act upon, by approval or denial, a suggestion presented to the council by a cabinet or agency; **and**

c. Reconsider [~~, and review~~] denials as set forth in subsection (4) of this section.

2. A designated coordinator **may** [~~shall have the right to~~] present recommended suggestions to the council and **request that the council vote on suggestions** [~~to vote on them~~].

3. The council may defer action for up to one (1) year and one

(1) month pending documentation of cash savings.

4. The council shall receive administrative support from the Personnel Cabinet.

5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.

6. The council shall meet:

a. At a minimum on a quarterly basis; or

b. [or] Upon the request of the council.

2. Chairperson or a majority of the coordinators.

[(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions. A suggestion shall:

1. Be made by an employee to the employee's cabinet or agency; or

2. Be forwarded from other coordinators if the suggestion affects the coordinator's agency.]

(c) The coordinator shall present suggestions recommended for approval by the [his] cabinet or agency to the council for consideration.

(2) Eligibility.

(a) A suggestion shall be a positive idea which:

1. Explains how to improve methods, equipment or procedures;

2. Reduces time or cost of a work operation;

3. Creates a safer work environment;

4. Increases revenue; or

5. Improves relationships with or services for the public.

(b) The suggestion shall:

1. Present an improvement in state service or function;

2. Explain how the change would be accomplished;

3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations;

4.a. Be made by an employee to the employee's cabinet or agency; or

b. Be forwarded from other coordinators if the suggestion affects the coordinator's agency;

5. Within ninety (90) working days of implementation by the agency, be:

a. Submitted on the Employee Suggestion Form P-35; and

b. Accompanied by exhibits or illustrations as needed;

6. Be practical, useful, and constructive; and

7. Be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion to request. [and

4. Be submitted on the Employee Suggestion Form P-35 and be accompanied by exhibits or illustrations as needed.

a. Suggestions shall be practicable, useful, and constructive.

b. A suggestion that requires legislative or regulatory changes for implementation may be submitted. It shall be the responsibility of the agency that desires to implement the suggestion to request the necessary legislative or regulatory changes. Upon appropriate legislative action or administrative regulation changes, the suggestion shall be considered for an award.

c. A suggestion which has been implemented and which will result in cost savings or improvement in government operations shall be eligible for an award if it is submitted on a Employee Suggestion Form P-35 within ninety (90) [thirty (30)] working days of implementation of the suggestion by an agency.]

(c) The following suggestions shall not be eligible for a cash award:

1. A suggestion that falls within the scope of the duties of the suggested and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include a specific set of tasks as set forth in the position description of the suggester upon submission of [at the time] the suggestion [is submitted];

2. A suggestion related to a particular problem given to an employee to solve within the scope of the employee's [his] duties and responsibilities;

3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;

4. A suggestion which includes [include] a proposal to perform routine maintenance operations or follow manufacturer's recommendations;

5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible; or

6. A suggestion which corrects an error or condition that exists because established procedures were not followed.

(d) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be [with an award being] divided equally between or among the suggesters.

(e)1. The first suggestion received shall take precedence over all future suggestions having the same purpose.

2. If two (2) or more similar suggestions [If two (2) or more suggestions deemed similar] are received on the same day, an award granted shall be divided equally between or among the suggesters.

(f) A suggestion shall be considered a confidential communication [confidential communications] among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) General provisions.

(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

1. A method to notify the suggester[,] in writing[,] that the suggestion has been received[,] and to notify the suggester[,] in writing[,] of a change in the status of the suggestion;

2. A method to document the original suggestion, evaluation, and action taken; and

3. A method to prepare and present documentation of a suggestion for recommendation to the council.

(b)1. Eligibility of a suggestion shall be evaluated according to the circumstances existing upon submission of the suggestion.

2. [at the time the suggestion was made]. An evaluation shall be completed by a person with expertise in the area under consideration. 3.The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion, [Form] P-36, and the form shall be dated and signed by the individual making the evaluation.

(c)1. The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by the coordinator.

2. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.

3.[1.] A suggestion shall be considered to be active and eligible for an award until the suggester is notified[,] in writing[,] that the suggestion has been approved or denied.

4. If [2. If it is determined that] a suggestion will not be implemented, the coordinator shall notify the suggester[,] in writing[,] stating the reason it was not implemented.

5.a.[3.] If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency.

b. The request shall:

(i) [a.] Be in writing;

(ii)[b.] Be evaluated by the next level of supervision;

(iii)[c.] Be received by the agency within one (1) year from the date of rejection; and

(iv)[d.] Include information regarding the change in conditions.

(d) If a suggestion is approved and implemented by the [a] cabinet or agency, the suggester's coordinator shall recommend approval of the suggestion to the council.

1. The recommendation shall contain:

a. The suggestion as completed by the suggester on the Employee Suggestion Form, P-35;

b. The evaluation forms completed according to the criteria set forth in this administrative regulation; and

c. A statement of actual or projected cost savings using generally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson of the

council shall send written notification of the council's action to the suggester's coordinator and the coordinator shall then provide written notification to the suggester regarding the decision.

3. If an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(e) Award of cash payment shall be in accordance with KRS 18A.202.

1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs and shall be determined according to generally accepted accounting principles.

2.a. The award check shall be issued by the agency where the suggester is employed.

b. Funds for payment shall come from the agency or agencies implementing the suggestion.

c. if applicable the agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.

3 a. If a suggestion may result in financial savings to the state and proper documentation of cost savings has not yet been obtained, the council shall request that each agency implementing the suggestion maintain records which document the cost savings for a period not to exceed one (1) year from the date of implementation.

b. Documentation shall be conducted [~~carried out~~] according to generally accepted accounting principles.

c. This cost savings analysis shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of completion of the analysis [~~its completion~~].

(f)1. If a suggestion has been approved by the council and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of $100 and a maximum of $2,500.

2. If a suggestion approved by the council results in an intangible improvement in state service, the suggester shall be compensated in the amount of $100.

3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state.

(4) Reconsideration.

(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial is received by the suggester.

(b)1. The suggester shall request reconsideration[~~,~~] in writing[~~,~~] and shall set forth the basis for the request.

2.a. The request shall be filed with the coordinator within ten (10) days of the date of the denial.

b. If the tenth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.

(c) Within thirty (30) work days, the cabinet or agency shall act on the request for reconsideration and notify the suggester[~~,~~] in writing[~~,~~] of the reason for the decision.

(5) Council review.

(a)1. A suggestion may be reviewed by the council on its own motion, or upon request of the suggester.

2. If a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council.

a. The suggester shall request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth[~~,~~] in writing[~~,~~] the basis for the request.

b.(i) [~~his request~~] The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.

(ii) If the 30th day falls on a day that the chairperson's office is closed during regular work hours, the request may be filed on the next work day.

(b) The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review.

(c) The council chairperson shall notify the agency head of the council's findings and its recommendation concerning the suggestion's implementation or denial.

Section 2. Adoption Benefit Program. (1) [~~The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to a state employee in the executive branch who adopts a child on or after November 1, 1998.~~

~~(2)~~] A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child.

(a) The eligible [~~Funding for this program shall be limited to $150,000 in a fiscal year.~~

~~(3) The~~] employee shall receive:

1.[~~(a)~~] Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

2.[~~(b)~~] Up to $3,000 in unreimbursed direct costs related to the adoption of any other child.

b.[~~(4)~~] Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

1.[~~(a)~~] Licensed adoption agency fees;

2.[~~(b)~~] Legal fees;

3.[~~(c)~~] Medical costs;

4.[~~(d)~~] Court costs; and

5.[~~(e)~~] Other [~~reasonable~~] fees or costs associated with child adoption in accordance with state and federal law and after review and approval [~~as allowed by state and federal law and reviewed and approved~~] by the court at the [~~time of~~] finalization of the adoption.

(c)[~~(5)~~] Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with [~~and supported by~~] documentary evidence of:

1.[~~(a)~~] Finalization of the adoption;

2.[~~(b)~~] Certification by the Secretary of the Cabinet for Health and Family Services [~~Families and Children~~] that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

3.[~~(c)~~] A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the [~~time of~~] finalization of the adoption.

d. [~~(6)~~] If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in paragraph (a) of this subsection.

(e) [~~subsection (3) of this section.~~

~~(7)~~] Upon approval of the application for financial assistance, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel[~~, if the amount available for the program has not been exhausted~~].

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Employee Suggestion Form", P-35, October 1997;

(b) "Evaluation of Employee Suggestion" Form, P-36, October 2007 [~~February 1993~~]; and

(c) "State Employee Adoption Assistance Application", October 2007 [~~July 1999~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: August 6, 2007

FILED WITH LRC: August 13, 2007 at 3PM

CONTACT PERSON. Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Drive, Suite 516, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, October 9, 2007)

103 KAR 8:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal.

RELATES TO: KRS 132.020, 132.200
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. **KRS 132.020(1)(i) establishes the ad valorem tax rate based on the value of the machinery actually engaged in manufacturing. KRS 132.200(4) provides that machinery actually engaged in manufacturing shall be subject to taxation for state purposes only.** This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the coal industry.

Section 1. Definitions. (1) "Manufacturing machinery" means machinery actually engaged in manufacturing that is subject to the state ad valorem tax of fifteen (15) cents upon each $100 of value provided in KRS 132.020(1) and exempt under KRS 132.200(4) from ad valorem taxation by any county, city, school or other taxing district in which it has a taxable situs.

(2) "Processing area" means the area of a coal preparation plant or coal load out facility where operational steps and methods are used to wash, size, blend, crush, load, or chemically treat **coal** to get a final marketable product.

Section 2. Machinery Actually Engaged in Extraction, Severance, Dredging or Mining of Coal. Machinery used in the extraction, severance, dredging or mining of coal **shall not be classified as** [~~is not~~] manufacturing machinery for purposes of KRS Chapter 132.

Section 3. Machinery Actually Used in Mining or **a** Similar Operation that is Engaged in Manufacturing. (1) Machinery actually used in the crushing, sizing, blending, chemical treating and washing of coal **shall be classified as** [~~is~~] manufacturing machinery

(2) Coal manufacturing **shall begin** [~~begins~~] when machinery and equipment is used to convey the raw coal into the crushing, sizing, blending and washing facilities and **shall include** [~~includes~~] machinery and equipment moving the coal between the manufacturing processes within the processing area including in-process staging

(3) Machinery and equipment used to blend different product grades, prior to the point of the coal being loaded on transport for removal from the processing area, **shall be classified as** [~~is~~] manufacturing machinery.

(4) Manufacturing **shall end** [~~ends~~] with the loading of coal for final transport to the end user.

(a) The loading of coal for final transport to the end user **shall only be classified as** [~~is only~~] manufacturing if blending or chemical treatment occurs during the loading process.

(5) Machinery actually used in crushing, sizing, blending and washing **shall include** [~~includes~~] structures housing the crushing, sizing, blending or washing machinery.

(6) Machinery whose purpose **shall be classified as** [~~is~~] to move, stage or load the coal when it is utilized subsequent to receiving or dumping of the coal into one of these processes and prior to completion of the sizing, crushing, blending or washing process is manufacturing machinery.

Section 4. Equipment Used in Mining or **a** Similar Operation that is not Engaged in Manufacturing. (1) The manufacturing process **shall exclude** [~~excludes~~] coal hauled via **a** licensed truck outside the processing area.

(2) [~~No~~] Other machinery actually used in extraction, severance, dredging or mining operations **shall not be classified as** [~~is~~] manufacturing machinery regardless of where in the operation it is located.

ROBERT M. BURNSIDE, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 10 a.m.
CONTACT PERSON: James B. Livers, Assistant Director, Division of State Valuation, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Fourth Floor, Station 32, Frankfort, Kentucky 40620, phone 502 564-5807, fax 502 564-8192.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, October 9, 2007)

103 KAR 8:140. Ad valorem taxation of machinery actually used in the manufacturing of crushed stone, sand, and gravel.

RELATES TO: KRS 132.020, 132.200
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 **KRS 132.020(1)(i) establishes the ad valorem tax rate based on the value of all machinery actually engaged in manufacturing. KRS 132.200(4) provides that machinery actually engaged in manufacturing shall be subject to taxation for state purposes only.**. This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the crushed stone, sand, and gravel industries.

Section 1. Machinery Actually Engaged in Manufacturing. For purposes of this administrative regulation, KRS 132.020(1) and 132.200(4), "machinery actually engaged in manufacturing" includes the following:

(1) Machinery actually used in the conveying, crushing, screening, washing, drying, blending, and stockpiling of stone, sand, or gravel to a product of the appropriate gradation and specification required for sale or final use;

(2) Machinery and equipment actually used to size, crush, screen, blend, de-dust or wash the stone, sand, or gravel, including all necessary housing, electrical, and support systems;

(3) Machinery and equipment actually used to convey or maintain proper material flow of the stone, sand, or gravel to and between the crushing, sizing, screening, blending, dedusting, and washing facilities; or

(4) Machinery and equipment actually used to reassemble, remix, and blend the crushed stone, sand, or gravel into different product grades.

Section 2. Manufacturing of crushed Stone, Sand, Or Gravel. (1) Manufacturing of crushed stone, sand, and gravel **shall commence** [~~commences~~] with **the** initial sizing of the stone (shot rock), sand, or gravel after it has been removed from its natural deposit, and **shall continue** [~~continues~~] with the loading, hauling, pumping, or conveying to the primary crusher or screen.

(2) Manufacturing **shall continue** [~~continues~~] with the further sizing, classifying, crushing, screening, blending, dedusting, and washing of the stone, sand, or gravel.

(3) Manufacturing of stone, sand, or gravel **shall end** [~~ends~~] when the product meets and maintains the appropriate gradation, specifications, or blends.

(4) The loading of stone, sand, or gravel for final transport to the end user **shall only be classified as** [~~is only~~] manufacturing if blending occurs during the loading process.

ROBERT M. BURNSIDE, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 10 a.m.
CONTACT PERSON: James B. Livers, Assistant Director,

Office of Property Valuation, Division of State Valuation, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Fourth Floor, Station 30, Frankfort, Kentucky 40620, phone 502-564-5807, fax 502 564-8192.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, October 9, 2007)

103 KAR 8:150. Ad valorem taxation of machinery actually used in the manufacturing of hot mix asphalt.

RELATES TO: KRS 132.020, 132.200
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 **KRS 132.020(1)(i) establishes the ad valorem tax rate based on the value of the machinery actually engaged in manufacturing. KRS 132.200(4) provides that machinery actually engaged in manufacturing shall be subject to taxation for state purposes only**. This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the hot mix asphalt industry.

Section 1. Machinery Actually Engaged In Manufacturing. For purposes of this **administrative** regulation, KRS 132.020(1) and **132.200(4)** [~~132.400(4)~~], "machinery actually engaged in manufacturing" **shall include** [~~includes~~] the following:

(1) Machinery and equipment actually used to load raw materials into an asphalt plant's cold feed bins, including the cold feed bins; the blending of aggregates; the movement of material across screen decks into dryers or drums, including the dryer and drums; and surge facilities, silos, and load control systems;

(2) Machinery and equipment actually used to transport or convey the material through or between the cold feed bins, the screen decks, the dryer or drum, the surge facilities, silos, and load control systems;

(3) Machinery and equipment actually used to heat, dry, mix, and blend the aggregates with the liquid asphalt, including all necessary housing, electrical, controls, liquid asphalt tanks, and energy supply systems; or

(4) Machinery and equipment actually used to load, adhere, remix, place, and compact the hot mix asphalt.

Section 2. Manufacturing of Hot Mix Asphalt. (1) Manufacturing of hot mix asphalt **shall commence** [~~commences~~] with the loading of raw materials to the cold feed bins.

(2) Manufacturing **shall continue** [~~continues~~] with the blending of aggregates on the conveyor belts, through the flow of material across the screen decks, and into the dryer or drum for further blending or mixing.

(3) Manufacturing **shall continue** [~~continues~~] through the surge facilities, silos, and load control systems.

(4) Manufacturing of hot mix asphalt **shall end when:**

(a) Either:

1. [~~ends when either~~] The hot mix asphalt is loaded for delivery to a retail customer**; or**

2. [~~or~~] When the hot mix asphalt is placed and compacted as directed by the customer**; and**

(b) [~~and when~~] It meets the requirements set forth by the applicable customer or regulatory specifications.

(5) [~~(a)~~] The loading of hot asphalt for final transport to the end user **shall** [~~is~~] only **be classified as** manufacturing if blending occurs during the loading process.

ROBERT M. BURNSIDE, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 10 a m.
CONTACT PERSON: James B. Livers, Assistant Director, Division of State Valuation, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Fourth Floor, Station 30, Frankfort, Kentucky 40620, phone 502-564-5807, fax 502-564-8192.

GENERAL GOVERNMENT
Governor's Office for Local Development
(As Amended at ARRS, October 9, 2007)

109 KAR 15:020. County Budget Preparation and State Local Finance Officer Policy Manual.

RELATES TO: KRS **42.495, 43.070, 46.010, 46.020, 64.810, 64.840, 64.850, 65.7719, 65.900-65.925, 65.944, 66.045, 66.480, 67.075-67.077, 68.020, 68.210, 68.245, 68.250, 68.275, 68.280, 68.300, 686.350, 68.360, 91A.040(6), 132.010, 132.0225, 132.585, 149.590, 424.220, 424.230, 424.260, 441.135, 441.215, 441.235** [~~46.010, 46.020, 65.944, 66.045, 68.020, 68.210, 68.245, 68.250, 68.350, 132.585~~]
STATUTORY AUTHORITY: KRS 46.010, **66.045(3)** [~~65.944, 66.045~~], 68.210
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 46.010, 66.045(3), and 68.210 require** [~~This administrative regulation is necessary to implement KRS 46.010, 65.944, 66.045 and 68.210 and mandates~~]uniform minimum requirements relating to budgeting, reporting and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds. **This administrative regulation establishes the standards for budgeting, reporting, and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds.**

Section 1. **Applicability. (1) The County Budget Preparation and State Local Finance Officer Policy Manual contains, in part, a uniform system of accounts which shall be followed by all county officials.**

(2) The County Budget Preparation and State Local Finance Officer Policy Manual also prescribes a uniform system of accounting and reporting on the receipt, use, and handling of public funds, other than taxes, due and payable to the state from county, district, and other local officers and agencies.

(3) The County Budget Preparation and Sate Local Finance Officer Policy Manual is partially advisory in nature to all local government officials since, pursuant to KRS 68.210, the accounts and operations of all local government officers are subject to examination by the State Local Finance Officer.

Section **2.** Incorporation by Reference. (1) The "[~~2007 Instructional Guide for~~] County Budget Preparation and State Local Finance Officer Policy Manual, **October 2007.**[~~, revised1999~~]" is incorporated by reference.

(2) This material may be inspected, copied, or obtained**, subject to applicable copyright law**, at the Governor's Office for Local Development[~~office of the Department for Local Government~~], 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

COLLEEN CHANEY, Acting Commissioner
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 9 a.m.
CONTACT PERSON. Andrew S. Hartley, Staff Attorney, Governor's Office for Local Development, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone 502 573-2382, fax 502 573-2939.

GENERAL GOVERNMENT CABINET
Kentucky Board Of Ophthalmic Dispensers
(As Amended at ARRS, October 9, 2007)

201 KAR 13:080. Operation and Inspection of optical establishments.

RELATES TO. KRS 326.010(2), **326.010(3),** 326.030, 326.070,

326.090(2)[(4)], 326.990

STATUTORY AUTHORITY: KRS 326.020(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.030 provides that a person shall not engage in the practice of ophthalmic dispensing unless he is licensed. KRS 326 090(2) authorizes the board to impose a fine against any person who operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser. KRS 326.090(1)[(4)] authorizes the board to suspend or revoke a license to practice ophthalmic dispensing for a violation of KRS Chapter 326. [~~KRS 326.990 provides that the practice of ophthalmic dispensing without a license shall be a misdemeanor.~~] KRS 326 020(3)(a) authorizes the board to promulgate administrative regulations necessary to implement the chapter. This administrative regulation establishes a procedure for the operation and inspection of an optical establishment to determine if the establishment has complied with the licensing requirements.

Section 1. Definitions. (1) "Operates an optical establishment" means to engage in business activities at an optical establishment, including the activities of the owner of the optical establishment and the authorized representative of the owner in the management of the optical establishment and its employees.

(2) "Optical establishment" is defined in KRS 326 010(3).

(3) "Person" is defined in KRS 446.010(27).

(4) "Supervision" means the oversight of the practice of ophthalmic dispensing at an optical establishment by a Kentucky-licensed ophthalmic dispenser who is physically present on the premises. [~~The provisions of this administrative regulation shall apply exclusively to a person practicing ophthalmic dispensing as defined by KRS 326 010(2).~~]

Section 2. Optical Establishment Supervisor. (1) Each optical establishment shall have a Kentucky-licensed ophthalmic dispenser to provide supervision for the establishment.

(2) An ophthalmic dispenser who leaves the employment of an optical establishment shall notify the board within five (5) working days of his departure from that optical establishment.

Section 3. (1) A board member, employee of the board, or an authorized agent may enter an optical establishment which is required to be under the supervision of a Kentucky-licensed ophthalmic dispenser [~~where a licensed ophthalmic dispenser or apprentice ophthalmic dispenser practices ophthalmic dispensing~~] during regular business hours to determine:

(a) If [~~Whether~~] the optical establishment is under the supervision of a Kentucky-licensed ophthalmic dispenser;

(b) If [~~Whether~~] every [~~if a~~] person practicing ophthalmic dispensing at the optical [~~that~~] establishment is in compliance with the statutes and administrative regulations applying to the practice of ophthalmic dispensing; and

(c) The name of each person or persons who operates the optical establishment.

(2) The provisions of this administrative regulation shall not apply to a person who is exempted under KRS 326.070.

Section 4.[~~3.~~] A licensed ophthalmic dispenser or apprentice ophthalmic dispenser shall produce the appropriate license or identification for each person employed within the optical establishment upon request.

Section 5.[~~4.~~] A licensed ophthalmic dispenser shall permit the complete inspection of an optical establishment used in the practice of ophthalmic dispensing upon request.

Section 6.[~~5.~~] A licensed ophthalmic dispenser or apprentice ophthalmic dispenser shall display his license in a conspicuous place in the office in which he practices. He shall also produce, upon request, a current identification card issued by the board.

Section 7. (1) The board may impose a fine not to exceed $1000 [~~$3,000~~] for a violation of KRS 326.090(2).

(2) The procedure for imposing a fine on a person for violation of KRS 326 090(2) shall be conducted in accordance with KRS Chapter 13B and 326.100.

This is to certify that the Chair of the Kentucky Board of Ophthalmic Dispensers has approved this administrative regulation prior to is filing by the Kentucky Board of Ophthalmic Dispensers with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 326.

GRANVILLE SMITH, Chair
JOHN FARRIS, Secretary

APPROVED BY AGENCY: July 13, 2007

FILED WITH LRC: July 23, 2007 at 4 p.m.

CONTACT PERSON: Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS October 9, 2007)

401 KAR 57:002. 40 C.F.R. Part 61 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [~~40 C.F.R. 61.01-61.139, 61.160-61.358,~~] 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224 10-100(5) authorizes [~~requires~~] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [~~establishes~~] [~~incorporates by reference~~] the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 61.01 through [~~to~~] 61.139 and 61.160 through [~~to~~] 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States **Enviromental** [~~Environment~~] Protection Agency **retains** [~~shall retain~~] enforcement authority.

(2) "Part 61 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 61 01 through 61.139 and 61 160 through 61 358, Subparts A through L and N through FF. [~~For purposes of 40 C.F.R. 61 01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.~~

~~(2) For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C F R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF)~~]

Section 2. Applicability. This administrative regulation shall apply to sources [~~that are~~] subject to 40 C.F.R. 61.01 through [~~to~~] 61.139 and 61.160 through [~~to~~] 61.358, Subparts A through L and N through FF [(~~Subparts A to L and N to FF~~)]. These sources shall comply with the following:

(1) The applicable provisions **codified** in 40 C.F.R. 61.01 through [~~to~~] 61.19 (Subpart A), "General Provisions";

(2) The applicable methods, procedures, and reporting requirements **codified** [~~contained~~] in 40 C.F.R. Part 61, Appendices A through E; and

(3) The applicable Part 61 NESHAP.

~~[Section 3. Incorporation by Reference. (1) The following material is incorporated by reference as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2003:~~

~~(a) 40 C.F.R. 61.01 to 61.19 (Subpart A), "General Provisions";~~

~~(b) 40 C.F.R. 61.20 to 61.26 (Subpart B), "National Emission Standards for Radon Emissions from Underground Uranium Mines";~~

~~(c) 40 C.F.R. 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium";~~

~~(d) 40 C.F.R. 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing";~~

~~(e) 40 C.F.R. 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury";~~

~~(f) 40 C.F.R. 61.60 to 61.71 (Subpart F), "National Emission Standard for Vinyl Chloride";~~

~~(g) 40 C.F.R. 61.90 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities",~~

~~(h) 40 C.F.R. 61.100 to 61.108 (Subpart I), "National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H";~~

~~(i) 40 C.F.R. 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene";~~

~~(j) 40 C.F.R. 61.120 to 61.127 (Subpart K), "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants";~~

~~(k) 40 C.F.R. 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants";~~

~~(l) 40 C.F.R. 61.160 to 61.165 (Subpart N), "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants";~~

~~(m) 40 C.F.R. 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters";~~

~~(n) 40 C.F.R. 61.180 to 61.186 (Subpart P), "National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities",~~

~~(o) 40 C.F.R. 61.190 to 61.193 (Subpart Q), "National Emission Standards for Radon Emissions from Department of Energy Facilities";~~

~~(p) 40 C.F.R. 61.200 to 61.210 (Subpart R), "National Emission Standards for Radon Emissions from Phosphogypsum Stacks";~~

~~(q) 40 C.F.R. 61.220 to 61.226 (Subpart T), "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings";~~

~~(r) 40 C.F.R. 61.240 to 61.247 (Subpart V), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)";~~

~~(s) 40 C.F.R. 61.250 to 61.256 (Subpart W), "National Emission Standards for Radon Emissions from Operating Mill Tailings";~~

~~(t) 40 C.F.R. 61.270 to 61.277 (Subpart Y), "National Emission Standard for Benzene Emissions from Benzene Storage Vessels";~~

~~(u) 40 C.F.R. 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations";~~

~~(v) 40 C.F.R. 61.340 to 61.358 (Subpart FF), "National Emission Standard for Benzene Waste Operations";~~

~~(w) "Appendix A to Part 61, National Emission Standards for Hazardous Air Pollutants, Compliance Status Information";~~

~~(x) "Appendix B to Part 61, Test Methods";~~

~~(y) "Appendix C to Part 61, Quality Assurance Procedures";~~

~~(z) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions"; and~~

~~(aa) "Appendix E to Part 61, Compliance Procedures Methods for Determining Compliance With Subpart I".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:~~

~~(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;~~

~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;~~

~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~

~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;~~

~~(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304, and~~

~~(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.~~

~~(3) Copies of the C.F.R. are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at http://bookstore.gpo.gov.~~

~~(4) Copies of the C.F.R. and Federal Register are available electronically at http://gpoaccess.gov/cfr/index.html.]~~

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 14, 2007 at 3 p.m.
CONTACT PERSON. Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone 502 573-3382, fax 502 573-3787, and email gerry.ennis@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS October 9, 2007)

401 KAR 58:025. 40 C.F.R. Part 61 national emission standard for asbestos.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [~~224.20-300, 224.20-310, 224.20-320,~~] 224.99-010, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601[~~, 68 Fed. Reg. 54793 September 18, 2003~~]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, [~~224.20-300, 224.20-310, 224.20-320~~], 224.99-010, [~~40 C.F.R. 61.140-61.157,~~] 42 U.S.C. 7401, 7412, 7414, 7416, 7601[~~, 68 Fed. Reg. 54793 September 18, 2003~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [~~requires~~] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [~~establishes~~] [~~incorporates by reference~~] the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through [~~to~~] 61.157[~~, as amended in 68 Fed. Reg. 54793 September 18, 2003~~]. Delegation of implementation and enforcement authority for the federal NESHAP Program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency retains [~~shall retain~~] enforcement authority.

(2) "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through 61.157, Subpart M. [~~For purposes of 40 C.F.R. 61.140 to 61.157, Subpart M, "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection~~

~~Agency shall retain enforcement authority.~~

~~(2) For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 to 61.157, Subpart M.~~]

Section 2. Applicability. This administrative regulation shall apply to sources that are that are subject to 40 C.F.R. 61.140 through [to] 61.157, Subpart M. Owners and contractors of these sources shall comply with the following:

(1) The applicable provisions codified in 40 C.F.R. 61.140 through [to] 61.157, Subpart M, "National Emission Standard for Asbestos";

(2) The applicable provisions and requirements codified [contained] in "Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations"; and

(3) Completion and submittal of [Complete and submit] Form DEP 7036 to the Division for Air Quality prior to renovation or demolition [. This form is incorporated by reference in Section 3 of this administrative regulation.] [The applicable revisions in "Part 61 Subpart M-Amended".]

Section 3. Incorporation by Reference. (1) ["]Form DEP 7036, "Notification of Asbestos. Abatement/Demolition/Renovation", May 1998["], is incorporated by reference. [The following material is incorporated by reference:

~~(a) 40 C.F.R. 61.140 to 61.157, Subpart M, "National Emission Standard for Asbestos" and "Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations", as published July 1, 2003,~~

~~(b) "Part 61 Subpart M-Amended", as published 68 Fed. Reg. 54793, September 18, 2003; and~~

~~(c) "Form - DEP - 7036, Notification of Asbestos Abatement/Demolition/Renovation, May 1998".~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358;

(f)[~~(e)~~] Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g)[~~(f)~~] London Regional Office, 875 S. Main Street, London Kentucky 40741, (606) 330-2080;

(h)[~~(g)~~] Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; or[and]

(i)[~~(h)~~] Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) Form DEP 7036 is available electronically at www.air.ky.gov/programs/asbestos/Asbestos+Forms+and+Applications [http://www.air.ky.gov/]. [Copies of the C.F.R. and Federal Register are available for sale from the Superintendent of documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at http://bookstore.gpo.gov.

~~(4) Copies of the C.F.R. and Federal Register are available electronically at http://gpoaccess.gov/cfr/index.html.~~]

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 14, 2007 at 3 p.m.
CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email gerry.ennis@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS October 9, 2007)

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120 [,~~40 C.F.R. 60.1-60.19, 60.40-60.506, 60.540-60.668, 60.680-60.4420~~][~~60.680-60.2875~~], 42 U.S.C. 7411

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1-60.19, 60.40-60.506, 60.540-60.668, 60.680-60.4420[~~60.680-60.2875~~], 42 U.S.C. 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [requires] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [establishes] [incorporates by reference] the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. 60.1 through [to] 60.19, 60.40 through [to] 60.506, 60.540 through [to] 60.668, and 60.680 through 60.4420 [to 60.2875]. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency retains [shall retain] enforcement authority.

(2) "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 through 60.19, 60.40 through 60.506, 60.540 through 60.668 and, 60.680 through 60.4420, Subparts A, D through XX, BBB through NNN, and PPP through KKKK.

[~~For purposes of 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, (Subparts A, D to XX, BBB to NNN, and PPP to DDDD), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.~~

~~(2) For purposes of 40 C.F.R. Part 60, "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, (Subparts A, D to XX, BBB to NNN, and PPP to DDDD).~~]

Section 2. Applicability. This administrative regulation shall apply to sources [that are] subject to 40 C.F.R. 60.1 through [to] 60.19, 60.40 through [to] 60.506, 60.540 through [to] 60.668, and 60.680 through 60.4420, Subparts A, D through XX, BBB through NNN, and PPP through KKK [~~60.680 to 60.2875 (Subparts A, D to XX, BBB to NNN, and PPP to DDDD)~~]. These sources shall comply with the following:

(1) The applicable provisions codified in 40 C.F.R. 60.1 through [to] 60.19 (Subpart A), "General Provisions";

(2) The applicable methods, procedures, and reporting requirements codified [contained] in 40 C.F.R. Part 60, Appendices A through F; and

(3) The applicable Part 60 NSPS.

[~~Section 3. Incorporation by Reference. (1) The following material is incorporated by reference as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2003:~~

~~(a) 40 C.F.R. 60.1 to 60.19 (Subpart A), "General Provisions";~~

~~(b) 40 C.F.R. 60.40 to 60.46 (Subpart D), "Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971";~~

~~(c) 40 C.F.R. 60.40a to 60.49a (Subpart Da), "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978";~~

~~(d) 40 C.F.R. 60.40b to 60.49b (Subpart Db), "Standards of~~

~~Performance for Industrial-Commercial-Institutional Steam Generating Units";~~

~~(e) 40 C.F.R. 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units";~~

~~(f) 40 C.F.R. 60.50 to 60.54 (Subpart E), "Standards of Performance for Incinerators";~~

~~(g) 40 C.F.R. 60.50a to 60.59a (Subpart Ea), "Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1994";~~

~~(h) 40 C.F.R. 60.50b to 60.59b (Subpart Eb), "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or For Which Modification or Reconstruction is Commenced After June 19, 1996";~~

~~(i) 40 C.F.R. 60.50c to 60.58c (Subpart Ec), "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996";~~

~~(j) 40 C.F.R. 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants";~~

~~(k) 40 C.F.R. 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants";~~

~~(l) 40 C.F.R. 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants";~~

~~(m) 40 C.F.R. 60.90 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities";~~

~~(n) 40 C.F.R. 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries";~~

~~(o) 40 C.F.R. 60.110 to 60.113 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978";~~

~~(p) 40 C.F.R. 60.110a to 60.115a (Subpart Ka), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984";~~

~~(q) 40 C.F.R. 60.110b to 60.117b (Subpart Kb), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984";~~

~~(r) 40 C.F.R. 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters";~~

~~(s) 40 C.F.R. 60.130 to 60.133 (Subpart M), "Standards of Performance for Secondary Brass and Bronze Production Plants";~~

~~(t) 40 C.F.R. 60.140 to 60.144 (Subpart N), "Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973";~~

~~(u) 40 C.F.R. 60.140a to 60.145a (Subpart Na), "Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983";~~

~~(v) 40 C.F.R. 60.150 to 60.156 (Subpart O), "Standards of Performance for Sewage Treatment Plants";~~

~~(w) 40 C.F.R. 60.160 to 60.166 (Subpart P), "Standards of Performance for Primary Copper Smelters";~~

~~(x) 40 C.F.R. 60.170 to 60.176 (Subpart Q), "Standards of Performance for Primary Zinc Smelters";~~

~~(y) 40 C.F.R. 60.180 to 60.186 (Subpart R), "Standards of Performance for Primary Lead Smelters";~~

~~(z) 40 C.F.R. 60.190 to 60.195 (Subpart S), "Standards of Performance for Primary Aluminum Reduction Plants";~~

~~(aa) 40 C.F.R. 60.200 to 60.204 (Subpart T), "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants";~~

~~(bb) 40 C.F.R. 60.210 to 60.214 (Subpart U), "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants";~~

~~(cc) 40 C.F.R. 60.220 to 60.224 (Subpart V), "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants";~~

~~(dd) 40 C.F.R. 60.230 to 60.234 (Subpart W), "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants";~~

~~(ee) 40 C.F.R. 60.240 to 60.244 (Subpart X), "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities";~~

~~(ff) 40 C.F.R. 60.250 to 60.254 (Subpart Y), "Standards of Performance for Coal Preparation Plants";~~

~~(gg) 40 C.F.R. 60.260 to 60.266 (Subpart Z), "Standards of Performance for Ferroalloy Production Facilities";~~

~~(hh) 40 C.F.R. 60.270 to 60.276 (Subpart AA), "Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983";~~

~~(ii) 40 C.F.R. 60.270a to 60.276a (Subpart AAa), "Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983";~~

~~(jj) 40 C.F.R. 60.280 to 60.285 (Subpart BB), "Standards of Performance for Kraft Pulp Mills";~~

~~(kk) 40 C.F.R. 60.290 to 60.296 (Subpart CC), "Standards of Performance for Glass Manufacturing Plants";~~

~~(ll) 40 C.F.R. 60.300 to 60.304 (Subpart DD), "Standards of Performance for Grain Elevators";~~

~~(mm) 40 C.F.R. 60.310 to 60.316 (Subpart EE), "Standards of Performance for Surface Coating of Metal Furniture";~~

~~(nn) 40 C.F.R. 60.330 to 60.335 (Subpart GG), "Standards of Performance for Stationary Gas Turbines";~~

~~(oo) 40 C.F.R. 60.340 to 60.344 (Subpart HH), "Standards of Performance for Lime Manufacturing Plants";~~

~~(pp) 40 C.F.R. 60.370 to 60.374 (Subpart KK), "Standards of Performance for Lead-Acid Battery Manufacturing Plants";~~

~~(qq) 40 C.F.R. 60.380 to 60.386 (Subpart LL), "Standards of Performance for Metallic Mineral Processing Plants";~~

~~(rr) 40 C.F.R. 60.390 to 60.398 (Subpart MM), "Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations";~~

~~(ss) 40 C.F.R. 60.400 to 60.404 (Subpart NN), "Standards of Performance for Phosphate Rock Plants";~~

~~(tt) 40 C.F.R. 60.420 to 60.424 (Subpart PP), "Standards of Performance for Ammonium Sulfate Manufacture";~~

~~(uu) 40 C.F.R. 60.430 to 60.435 (Subpart QQ), "Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing";~~

~~(vv) 40 C.F.R. 60.440 to 60.447 (Subpart RR), "Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations";~~

~~(ww) 40 C.F.R. 60.450 to 60.456 (Subpart SS), "Standards of Performance for Industrial Surface Coating: Large Appliances";~~

~~(xx) 40 C.F.R. 60.460 to 60.466 (Subpart TT), "Standards of Performance for Metal Coil Surface Coating";~~

~~(yy) 40 C.F.R. 60.470 to 60.474 (Subpart UU), "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture";~~

~~(zz) 40 C.F.R. 60.480 to 60.489 (Subpart VV), "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry";~~

~~(aaa) 40 C.F.R. 60.490 to 60.496 (Subpart WW), "Standards of Performance for the Beverage Can Surface Coating Industry";~~

~~(bbb) 40 C.F.R. 60.500 to 60.506 (Subpart XX), "Standards of Performance for Bulk Gasoline Terminals";~~

~~(ccc) 40 C.F.R. 60.540 to 60.548 (Subpart BBB), "Standards of Performance for the Rubber Tire Manufacturing Industry";~~

~~(ddd) 40 C.F.R. 60.560 to 60.566 (Subpart DDD), "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry";~~

~~(eee) 40 C.F.R. 60.580 to 60.585 (Subpart FFF), "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing";~~

~~(fff) 40 C.F.R. 60.590 to 60.593 (Subpart GGG), "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries";~~

~~(ggg) 40 C.F.R. 60.600 to 60.604 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities";~~

~~(hhh) 40 C.F.R. 60.610 to 60.618 (Subpart III), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes";~~

~~(iii) 40 C.F.R. 60.620 to 60.625 (Subpart JJJ), "Standards of~~

~~Performance for Petroleum Dry Cleaners";~~

~~(jjj) 40 C.F.R. 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants";~~

~~(kkk) 40 C.F.R. 60.640 to 60.648 (Subpart LLL), "Standards of Performance for Onshore Natural Gas Processing - SO2 Emissions";~~

~~(lll) 40 C.F.R. 60.660 to 60.668 (Subpart NNN), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations";~~

~~(mmm) 40 C.F.R. 60.680 to 60.685 (Subpart PPP), "Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants";~~

~~(nnn) 40 C.F.R. 60.690 to 60.699 (Subpart QQQ), "Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems";~~

~~(ooo) 40 C.F.R. 60.700 to 60.708 (Subpart RRR), "Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes";~~

~~(ppp) 40 C.F.R. 60.710 to 60.718 (Subpart SSS), "Standards of Performance for Magnetic Tape Coating Facilities";~~

~~(qqq) 40 C.F.R. 60.720 to 60.726 (Subpart TTT), "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines";~~

~~(rrr) 40 C.F.R. 60.730 to 60.737 (Subpart UUU), "Standards of Performance for Calciners and Dryers in Mineral Industries";~~

~~(sss) 40 C.F.R. 60.740 to 60.748 (Subpart VVV), "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities";~~

~~(ttt) 40 C.F.R. 60.750 to 60.759 (Subpart WWW), "Standards of Performance for Municipal Solid Waste Landfills";~~

~~(uuu) 40 C.F.R. 60.1000 to 60.1465 (Subpart AAAA), "Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001";~~

~~(vvv) 40 C.F.R. 60.1500 to 60.1940 (Subpart BBBB), "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999";~~

~~(www) 40 C.F.R. 60.2000 to 60.2265 (Subpart CCCC), "Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced On or After June 1, 2001";~~

~~(xxx) 40 C.F.R. 60.2500 to 60.2875 (Subpart DDDD), "Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999";~~

~~(yyy) "Appendix A to Part 60, Test Methods";~~

~~(zzz) "Appendix B to Part 60, Performance Specifications";~~

~~(aaaa) "Appendix C to Part 60, Determination Of Emission Rate Change";~~

~~(bbbb) "Appendix D to Part 60, Required Emission Inventory Information"; and~~

~~(cccc) "Appendix F to Part 60, Quality Assurance Procedures".~~

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~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;~~

~~(c) Bowling Green Regional Office, 1508 Weston Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~

~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;~~

~~(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and~~

~~(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.~~

~~(3) Copies of the C.F.R. are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at http://bookstore.gpo.gov.~~

~~(4) Copies of the C.F.R. and Federal Register are available electronically at http://gpoaccess.gov/cfr/index.html.~~]

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 14, 2007 at 3 p.m.
CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone 502 573-3382, fax 502 573-3787, and email: gerry.ennis@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS October 9, 2007)

401 KAR 60:670. 40 C.F.R. Part 60 standards of performance for nonmetallic mineral processing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [~~40 C.F.R. 60, 60.670-60.676~~], 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.670-60.676, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [~~requires~~] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [~~establishes~~] [~~incorporates by reference~~] the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 through [~~to~~] 60.676, Subpart OOO [(~~Subpart OOO~~)], and establishes alternate compliance standards for the control of particulate emissions from nonmetallic mineral processing plants. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7411(c)(1)

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 60 NSPS" means the Standards of Performance for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 through 60.676, Subpart OOO. [~~For purposes of 40 C.F.R. 60.670 to 60.676 (Subpart OOO), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.~~

~~(2) For purposes of 40 C.F.R. Part 60, "Part 60 NSPS" means the Standards of Performance for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 to 60.676 (Subpart OOO).~~]

Section 2. Applicability. This administrative regulation shall apply to sources [~~that are~~] subject to 40 C.F.R. 60.670 through [~~to~~] 60.676, Subpart OOO [(~~Subpart OOO~~)]. These sources shall comply with the following:

(1) The applicable provisions codified in 40 C.F.R. 60.670 through [~~to~~] 60.676, Subpart OOO [(~~Subpart OOO~~)], "Standards of Performance for Nonmetallic Mineral Processing Plants"; and

(2) The applicable test methods and requirements codified [~~contained~~] in Appendix A to Part 60[~~, incorporated by reference in~~

~~401 KAR 60.005~~], except as provided in Section 3 of this administrative regulation.

Section 3. Alternate Compliance Standards for Particulate Matter. (1) Subsection (2) of this section shall apply in lieu of 40 C.F.R. 60.672, Standard for particulate matter, if:

(a) An affected facility is enclosed in a building that cannot be safely entered; or

(b) Reference Method 9 cannot be applied using guidance specified by the U.S. EPA for an affected facility enclosed inside a building.

(2) The owner or operator of a facility specified in subsection (1) of this section shall comply with the following alternate compliance standards for particulate matter:

(a) For a building vent, the discharge of emissions into the atmosphere shall not exceed the stack emissions limits in 40 C.F.R. 60.672(a);

(b) For a building that does not enclose a crusher, the discharge of fugitive emissions into the atmosphere shall not exceed ten (10) percent opacity; and

(c) For a building that encloses a crusher, the discharge of fugitive emissions shall not exceed fifteen (15) percent opacity.

[~~Section 4. Incorporation by Reference. (1) 40 C.F.R. 60.670 to 60.676 (Subpart OOO), "Standards of Performance for Nonmetallic Mineral Processing Plants," as published July 1, 2003 is incorporated by reference.~~

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~~(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;~~

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~~(c) Bowling Green Regional Office, 1508 Weston Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~

~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

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~~(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and~~

~~(h) Paducah Regional Office, 130 Eagle Nest Drive Paducah, Kentucky 42003, (270) 898-8468.~~

~~(3) Copies of the C.F.R. are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at http://bookstore.gpo.gov.~~

~~(4) Copies of the C.F.R. are available electronically at http://gpoaccess.gov/cfr/index.html.~~]

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 14, 2007 at 3 p.m.
CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email gerry.ennis@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS October 9, 2007)

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1-63 56, 63.70-63.81, 63.100-63.11434 [~~63.100-63.11168~~] [~~63.100-63.9942~~], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, [~~40 C.F.R. 63.1-63 56, 63.70-63.81, 63.100-63.11168~~] [~~63.100-63.9942~~], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [~~requires~~] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [~~establishes~~] [~~incorporates by reference~~] the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 through [~~to~~] 63 56, 63.70 through [~~to~~] 63.81, and 63.100 through 63.11434 [~~63.11168~~] [~~63.100 to 63.9942~~]. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency **retains** [~~shall retain~~] enforcement authority.

(2) "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified **40 C.F.R.** in 63.1 through 63 56, 63.70 through 63.81, and 63.100 through 63.11434 [~~63.11168~~], Subparts A, B, D, and F through **QQQQQQ** [~~GGGGGG~~]. [~~For purposes of 40 C.F.R. 63.1 to 63.56, 63.70 to 63.81, and 63.100 to 63.9942 (Subparts A, B, D, and F to TTTTT), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.~~

~~(2) For purposes of 40 C.F.R. Part 63, "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 63.1 to 63 56, 63.70 to 63.81, and 63.100 to 63.9942 (Subparts A, B, D, and F to TTTTT)~~.]

Section 2. Applicability. This administrative regulation shall apply to sources [~~that are~~] subject to 40 C.F.R. 63.1 through [~~to~~] 63.56, 63 70 through [~~to~~] 63.81, and 63.100 through 63.11434 [~~63.11168~~], Subparts A, B, D, and F through **QQQQQQ** [~~GGGGGG~~] [~~to 63.9942 (Subparts A, B, D, and F to TTTTT)~~]. These sources shall comply with the following:

(1) The applicable provisions **codified** in 40 C.F.R. 63.1 through 63.16, Subpart A [~~to 63 15 (Subpart A)~~], "General Provisions";

(2) For sources for which a maximum achievable control technology (MACT) determination has not been made, the applicable methods and procedures **codified** in 40 C.F.R. 63.40 through [~~to~~] 63 56, Subpart B[~~(Subpart B)~~], "Requirements for Control Technology Determinations for Major Sources In Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)";

(3) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions **codified** in 40 C.F.R. 63.70 through [~~to~~] 63 81, Subpart D [~~(Subpart D)~~], "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants";

(4) The applicable test methods, procedures, and other provisions [~~contained~~] in 40 C.F.R. Part 63, Appendices A through E; and

(5) The applicable Part 63 NESHAP.

[~~Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) 40 C.F.R. 63.1 to 63.15 (Subpart A), "General Provisions", published July 1, 2003, and as amended 68 Fed. Reg. 64446, November 13, 2003, 68 Fed. Reg. 70965, December 19, 2003, 69 Fed. Reg. 157, January 2, 2004, 69 Fed. Reg. 5063, February 3, 2004, 69 Fed. Reg. 20990, April 19, 2004, 69 Fed. Reg. 22623, April 26, 2004, 69 Fed. Reg. 33506, June 15, 2004;~~

~~(b) 40 C.F.R. 63.40 to 63 56 (Subpart B), "Requirements for Control Technology Determinations for Major Sources in Accor-~~

~~dance With Clean Air Act Sections, Sections 112(g) and 112(j)"; as published July 1, 2003;~~

~~(c) 40 C.F.R. 63.70 to 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", as published July 1, 2003;~~

~~(d) 40 C.F.R. 63.100 to 63.107 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry", as published July 1, 2003;~~

~~(e) 40 C.F.R. 63.110 to 63.153 (Subpart G), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater", as published July 1, 2003;~~

~~(f) 40 C.F.R. 63.160 to 63.183 (Subpart H), "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks", as published July 1, 2003;~~

~~(g) 40 C.F.R. 63.190 to 63.193 (Subpart I), "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks", as published July 1, 2003;~~

~~(h) 40 C.F.R. 63.210 to 63.217 (Subpart J), "National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production"; as published July 1, 2003;~~

~~(i) 40 C.F.R. 63.300 to 63.313 (Subpart L), "National Emission Standards for Coke Oven Batteries", as published July 1, 2003;~~

~~(j) 40 C.F.R. 63.320 to 63.326 (Subpart M), "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities", as published July 1, 2003;~~

~~(k) 40 C.F.R. 63.340 to 63.348 (Subpart N), "National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks", as published July 1, 2003;~~

~~(l) 40 C.F.R. 63.360 to 63.368 (Subpart O), "Ethylene Oxide Emissions Standards for Sterilization Facilities", as published July 1, 2003;~~

~~(m) 40 C.F.R. 63.400 to 63.407 (Subpart Q), "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers", as published July 1, 2003;~~

~~(n) 40 C.F.R. 63.420 to 63.429 (Subpart R), "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)", published July 1, 2003, and as amended 68 Fed. Reg. 70965, December 19, 2003;~~

~~(o) 40 C.F.R. 63.440 to 63.458 (Subpart S), "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry", as published July 1, 2003;~~

~~(p) 40 C.F.R. 63.460 to 63.470 (Subpart T), "National Emission Standards for Halogenated Solvent Cleaning", as published July 1, 2003;~~

~~(q) 40 C.F.R. 63.480 to 63.507 (Subpart U), "National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins", as published July 1, 2003;~~

~~(r) 40 C.F.R. 63.520 to 63.529 (Subpart W), "National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Nonnylon Polyamides Production", as published July 1, 2003;~~

~~(s) 40 C.F.R. 63.541 to 63.551 (Subpart X), "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting", as published July 1, 2003;~~

~~(t) 40 C.F.R. 63.560 to 63.568 (Subpart Y), "National Emission Standards for Marine Tank Vessel Loading Operations", as published July 1, 2003;~~

~~(u) 40 C.F.R. 63.600 to 63.611 (Subpart AA), "National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants", as published July 1, 2003;~~

~~(v) 40 C.F.R. 63.620 to 63.632 (Subpart BB), "National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants", as published July 1, 2003;~~

~~(w) 40 C.F.R. 63.640 to 63.655 (Subpart CC), "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries", as published July 1, 2003;~~

~~(x) 40 C.F.R. 63.680 to 63.698 (Subpart DD), "National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations", as published July 1, 2003;~~

~~(y) 40 C.F.R. 63.701 to 63.708 (Subpart EE), "National Emission Standards for Magnetic Tape Manufacturing Operations", as published July 1, 2003;~~

~~(z) 40 C.F.R. 63.741 to 63.759 (Subpart GG), "National Emission Standards for Aerospace Manufacturing and Rework Facilities", as published July 1, 2003;~~

~~(aa) 40 C.F.R. 63.760 to 63.777 (Subpart HH), "National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities", as published July 1, 2003;~~

~~(bb) 40 C.F.R. 63.780 to 63.788 (Subpart II), "National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)", as published July 1, 2003;~~

~~(cc) 40 C.F.R. 63.800 to 63.808 (Subpart JJ), "National Emission Standards for Wood Furniture Manufacturing Operations", as published July 1, 2003;~~

~~(dd) 40 C.F.R. 63.820 to 63.831 (Subpart KK), "National Emission Standards for the Printing and Publishing Industry", as published July 1, 2003;~~

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~~(ff) 40 C.F.R. 63.860 to 63.868 (Subpart MM), "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills", published July 1, 2003, and as amended 68 Fed. Reg. 42605, July 18, 2003, 68 Fed. Reg. 67954, December 5, 2003, 69 Fed. Reg. 25323, May 6, 2004;~~

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~~(yyyy) "Appendix A to Part 63 Test Methods", as published July 1, 2003;~~

~~(zzzz) "Appendix B to Part 63 Sources Defined for Early Reduction Provisions", as published July 1, 2003;~~

~~(aaaaa) "Appendix C to Part 63 Determination of the Fraction Biodegraded (Fbio) in a Biological Treatment Unit", as published July 1, 2003;~~

~~(bbbbb) "Appendix D to Part 63 Alternative Validation Procedure for EPA Waste and Wastewater Methods", as published July 1, 2003; and~~

~~(ccccc) "Appendix E to Part 63 Monitoring Procedure for Non-thoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions", as published July 1, 2003.~~

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LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 14, 2007 at 3 p.m.
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EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS October 9, 2007)

707 KAR 1:280. Definitions.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818 [~~C.F.R. 300.1-300.662~~], 20 U.S.C. [~~1221(e)~~], 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [~~mandates that~~] the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [~~to generally carry out~~] these programs. KRS 156.035 authorizes [~~sets forth the authority of~~] the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [~~1400 et seq.~~] and 34 C.F.R. 300.100 [~~Part 300~~] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

Section 1. Definitions. (1) "Admissions and release committee or "ARC" [~~(ARC)~~] means a group of individuals described in 707 KAR 1:320, Section 3, that is responsible for developing, reviewing, or revising an individual education program (IEP) for a child with a disability.

(2) "Adverse effect" means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

(3) [~~"Application" means a written request for funds which addresses requirements or terms to be met on a continuing basis in order for funds to be released or paid to or on behalf of the applicant.~~]

~~(4)~~] "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not mean a medical device that is surgically implanted, or the replacement of such a device.

(4) [~~(5)~~] "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include:

(a) The evaluation of the needs of a child with a disability, in-

cluding a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

(5) [(6)] "Autism" means a developmental disability significantly **affecting** [~~effecting~~] verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely **affects** [~~effects~~] a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely **affected** [~~effected~~] primarily because the child has an emotional-behavior disability.

(6) [(7)] "Business day" means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370, Section 1.

(7) [(8)] "Caseload for special classes" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.

(8) "Change of placement because of disciplinary removals" means a change of placement occurs if:

(a) The removal is for more than ten (10) consecutive schools days; or

(b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:

1.[(i)] The series of removals total more than ten (10) school days in a school year;

2.[(ii)] The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

3.[(iii)] Of additional factors, including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one (1) another.

(9) "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed **in the definitions** in this section for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(10) "Class size for resource classes" means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of [~~the~~] time set by the individual school.

(11) "Collaboration" means, for purposes of determining class size in 707 KAR 1:350, Section 2, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially-designed instruction and related services.

(12) "Complaint" means a written allegation that a local education agency (LEA) has violated a requirement of the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

(13) "Compliance" means the obligations of state or federal requirements are met.

(14) "Compliance monitoring report" means a written description of the findings of an investigation, like on-site monitoring, citing each requirement found in noncompliance.

(15) "Consent" means:

(a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;

(b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom; [~~and~~]

(c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(d) If a parent revokes consent, that revocation [~~is not retroactive (i.e., it~~] does not negate an action that has occurred after the consent was given and before the consent was revoked[)].

(16) "Controlled substance" means a drug or other substance identified under 21 U.S.C. Section 812(c).

(17) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

(18) "Corrective action plan **or "CAP"** [(~~CAP~~)]" means a written improvement plan describing activities and timelines, with persons responsible for implementation, developed to correct identified areas of noncompliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

(19) "Course of study" means a multiyear description of coursework from the student's current school year to the anticipated exit year designed to achieve the student's desired post-school goals.

(20) [(~~18~~)] "Day" means calendar day unless otherwise indicated as business day or school day.

(21) [(~~19~~)] "Deaf-blindness" means concomitant hearing and visual impairments that have an adverse effect on the child's education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.

(22) [~~(20) "Deficiency" means noncompliance.~~

~~(21)~~] "Developmental delay (DD)" means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help-[/]adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall be documented by:

(a) Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures; [~~or~~]

(b) Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or

(c) The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normal scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(23)[(~~22~~)] "Education records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232[(~~)g()~~].

(24)[(~~23~~)][(a)] "Emotional-behavioral disability[(~~EBD~~)]" **or "EBD"** means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one (1) or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

1.[(~~a~~)] Severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;

2. [(b)] Severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;

3.[(c)] A general pervasive mood of unhappiness or depression; or

4.[(d)] A tendency to develop physical symptoms or fears associated with personal or school problems.

(b) This term does not apply to children who display isolated (not necessarily one (1)) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

(25) [(24)] "Enforcement" means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

(26) [(25)] "Extended school year services" means specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents.

(27) [(26)] "Free appropriate public education (FAPE)" means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate,

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

(28) "Functional" means activities and skills that are not considered academic or related to a child's academic achievement as measured on statewide assessments **pursuant to** [contained in] 703 KAR Chapter 5.

(29) "Hearing impairment", [(]sometimes referred to as "deaf" or "hard of hearing", [)] means a hearing loss that:

(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by:

1. An average pure-tone hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 25dB in the better ear;

2. An average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or

3. An average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear;

(b) Results in difficulty identifying linguistic information through hearing; and

(c) Has an adverse effect on the child's educational performance

[(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by:

1. An average pure-tone hearing loss in the speech range (500-200Hz) of at least twenty-five (25) dBHL in the better ear;

2. An average high-frequency, pure-tone hearing loss of at least thirty-five (35) dBHL in the better ear for two (2) or more of the following frequencies: 2000, 4000, or 6000HZ; or

3. A unilateral hearing loss of at least 60dBHL as determined by either subparagraphs 1 or 2 of this paragraph;

(b) Results in difficulty processing linguistic information through hearing; and

(c) Has an adverse effect on the child's educational performance.]

(30) "High school diploma" means the student has completed the required course of study with the minimum number of credit hours as required by 704 KAR 3:305 and any applicable local district requirements. "High school diploma" does not mean a certificate of completion or a GED.

(31) [(27) "Hearing impairment (HI)" means that a child has a hearing loss that has an adverse effect on the child's educational performance, whether permanent or fluctuating, ranging from mild to profound (a loss of twenty-five (25) decibels (dB) or greater exists through speech frequencies of 500, 1000, and 2000 Hertz (Hz) in the better ear), and of a degree that the child is impaired in the processing of linguistic information through hearing, with or without amplification.

(28)] "Home school" means for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one's residence.

(32) [(29)] "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 **through 1450** [et seq.], as amended.

(33) [(30)] "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

(34) [(31)] "Individual education program[(IEP)]" **or "IEP"** means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

(35) "Interpreting services" means, with respect to children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services such as communication access real-time translation (CART) C-Print and Type Well and special interpreting services for children who are deaf-blind.

(36) [(32)] "Local educational agency[(LEA)]" **or "LEA"** means a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth. LEA also means any other public institution or agency, including the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD), that is charged by state statute with the responsibility of providing educational services to children with disabilities.

(37) [(33)] "Mental disability" means that a child has one (1) of the following:

(a) A mild mental disability (MMD) in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;

2. Adaptive behavior deficit is at least two (2) standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. **Manifestation is** [is] typically [manifested] during the developmental period; or

(b) A functional mental disability (FMD) in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;

2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. **Manifestation is** [is] typically [manifested] during the developmental period.

(38) [(34)] "Monitoring" means gathering and reviewing information to determine if a project or program meets state and IDEA [federal special education] requirements including the implementation of corrective action plans.

(39) [(35)] "Multiple disabilities [(MD)]" **or "MD"** means concomitant impairments that have an adverse effect on the child's educational performance [(e.g., mental disability-blindness, mental disability-orthopedic impairment, etc.)], the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. **Examples of MD include mental disability-blindness, and mental disability-orthopedic impairment.** Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability.

(40) [(36)] "Native language" means, if used in reference to an individual of limited English proficiency, the following:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;

(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or

(c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual, **such as** [(e.g.,]sign language,

Braille, or oral communication[}].

(41) [(37)] "Orthopedic impairment", or "OI" ["(OI)"] means a severe orthopedic impairment that adversely affects [effects] a child's educational performance. The term includes:

(a) An impairment caused by a congenital anomaly such as [(e.g.,] clubfoot, or absence of some member;

(b) [, etc.),] An impairment caused by disease such as [(e.g.,] poliomyelitis, or bone tuberculosis; and

(c) [, etc), and] An impairment from other causes such as [(e.g.,] cerebral palsy, amputations, and fractures or burns that causes contractures[}]

(42) [(38)] "Other health impairment [(OHI)]" or "OHI" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(a) Is due to a chronic or acute health problem, such as [e.g.,] acquired immune deficiency syndrome, asthma, attention deficit disorder, [or] attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourett syndrome, or tuberculosis; and

(b) Adversely affects [effects] a child's educational performance.

(43) [(39)] "Parent" means:

(a) A biological [natural] or adoptive parent of a child;

(b) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

(c) A person acting in the place of a biological or adoptive parent such as [(e.g.,] a grandparent, [or] stepparent, or other relative [(]with whom the child lives, [)] or a person who is legally responsible for the child's welfare;

(d) [A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 7; or

(e)] A foster parent if the biological or adoptive [natural] parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child;

(e) A foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or

(f) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 6

(44) [(40)] "Participating agency" means a state or local agency other than the LEA that is financially and legally responsible for providing transition services to a child with a disability.

(45) [(41)] "Personally identifiable information" means information that includes the name of the child, the child's parents, or other family member, the address of the child, a personal identifier, including the child's Social Security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(46) "Postsecondary goals" means those goals that a student hopes to achieve after leaving [secondary school (i.e.,] high school[}].

(47) [(42)] "Private school children with disabilities" means children with disabilities enrolled by their parents in private elementary or secondary school as defined by IDEA regulations, 34 C.F.R. Part 300.13 and 300.36, [schools] and not children with disabilities enrolled in private schools upon referral by a LEA.

(48) [(43)] "Public expense" means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 or ensures that the services are otherwise provided at no cost to the parent. Nothing in these administrative regulations shall relieve an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(49) [(44)] "Qualified personnel" means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

(50) [(45)] "Reasonable efforts to obtain voluntary compliance" means active and ongoing efforts by the Kentucky Department of Education through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an agreed-upon corrective action plan.

(51)[(46)](a) "Related services" means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

(b) "Related services" also means school health services and school nurse services, social work services in school, and parent counseling and training.

(c) "Related services" do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device

(d) The definition of "related services" does not:

1. Limit [However, nothing in 707 KAR Chapter 1 limits a] The responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school;

2. Prevent [b. Prevents] the routine checking of an external component of a surgically implanted device to make sure it is functioning properly; or

3. Limit [c.] The right of a child with a surgically-implanted device to receive related services that are determined by the ARC to be necessary for the child to receive FAPE.

(52) [(47)] "Sanctions" means actions such as [(e.g.,] technical assistance, consultation, or training, that are [among others)] taken by the Kentucky Department of Education in response to a LEA's failure to comply with the required standards in state and federal laws and administrative regulations.

(53) [(48)] "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.

(54) "Serious bodily injury" means bodily injury as defined [established] in 18 U.S.C. Section 1365(h)(3).

(55) "Services plan" means a written statement that describes the special education or related services that the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary that is developed in accordance with 707 KAR 1:370.

(56) [(49)] "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

(57) [(50)] "Special education mentor" means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197.

(58) [(51)] "Specially-designed instruction" means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies, 704 KAR 3.303.

(59) [(52)] "Specific learning disability" or "LD" [(LD)"] means a disorder that adversely affects the ability to acquire, comprehend, or apply reading, mathematical, writing, reasoning, listening, or speaking skills to the extent that specially designed instruction is

required to benefit from education. The specific learning disability (LD) may include dyslexia, dyscalculia, dysgraphia, developmental aphasia, and perceptual/motor disabilities. The term does not include deficits that are the result of other primary determinant or disabling factors such as vision, hearing, motor impairment, mental disability, emotional-[/]behavioral disability, environmental or economic disadvantaged, cultural factors, limited English proficiency, or lack of relevant research-based instruction in the deficit area.

(60) [~~in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in diminished ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions like perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.~~

~~(53)~~] "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely **affects** [~~effects~~] a child's educational performance.

(61) [~~(54)~~] "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

(62) [~~(55)~~] "Transition services" means a coordinated set of activities for a child with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's [~~within an outcome-oriented process (i.e., a process that outlines how a student will achieve goals consistent with the general curriculum, as appropriate), that promotes~~] movement from school to post-school activities, [,] including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the child's strengths, preferences, and interests; and

(c) Includes:

1. Instruction;

2. Related services; [~~and~~]

3. Community experiences;

4. The development of employment and other post-school adult living objectives; and

5. If appropriate, acquisition of daily living skills and functional vocational evaluation.

(63) [~~(56)~~] "Traumatic brain injury" **or "TBI"** [~~(TBI)~~"] means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely **affects** [~~effects~~] a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

(a) Cognition;

(b) Language;

(c) Memory;

(d) Attention;

(e) Reasoning;

(f) Abstract thinking;

(g) Judgment;

(h) Problem-solving;

(i) Sensory, perceptual, and motor abilities;

(j) Psychosocial behavior;

(k) Physical functions;

(l) Information processing; and

(m) Speech.

(64) [~~(57)~~] "Travel training" means instruction to children with significant cognitive disabilities and any other children with disabilities, as appropriate, to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment, **such as** [~~(E.G.,~~] school, home, work and community.[)]

(65) [~~(58)~~] "Visual impairment" **or "VI"** [~~(VI)~~] means [~~a child has~~] a vision loss, even with correction **that** [~~, as follows~~]:

(a) [~~Visual acuity even with prescribed lenses that is 20/70 or worse in the better eye; or~~

~~(b) Visual acuity that is better than 20/70 and the child has one (1) of the following conditions:~~

~~1. A medically-diagnosed progressive loss of vision;~~

~~2. A visual field of twenty (20) degrees or worse;~~

~~3. A medically-diagnosed condition of cortical blindness; or~~

~~4. A functional vision loss;~~

~~(c)~~] Requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration; [~~and~~]

(b) [~~(d)~~] Has an adverse effect on the child's educational performance; **and**

(c) Meets the following:

1. The child has visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or

2. The child has visual acuity that is better than 20/70 and the child has one (1) of the following conditions:

a. A medically-diagnosed progressive loss of vision;

b. A visual field of twenty (20) degrees or worse;

c. A medically-diagnosed condition of cortical blindness; or

d. A functional vision loss.

(66) [~~(59)~~] "Ward of the state" means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or nonvoluntary and the biological or adoptive [~~natural~~] parental rights have been terminated.

(67) [~~(60)~~] "Weapon" means "dangerous weapon" as defined in 18 **U.S.C.** [~~Section~~] 930(g)(2).

(68) [~~(61)~~] "Withholding" means no further payment of specified funds are made to an approved recipient.

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

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

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EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, October 9, 2007)

707 KAR 1:360. Confidentiality of information.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 **C.F.R. 300.1 - 300.818** [~~C.F.R. 300.1-300.662~~], 20 U.S.C.[~~1221(e),~~] 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 **requires** [~~mandates that~~] the Kentucky Board of Education **to** adopt rules and administrative regulations **for proper administration of** [~~to generally carry out~~] these programs. KRS 156.035 **authorizes** [~~sets forth the authority of~~] the Kentucky Board of Education to implement any act of Con-

gress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [~~U.S.C. 1400 et seq.~~] and 34 C.F.R. 300.100 [~~C.F.R. Part 300~~] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements ensuring confidentiality of information maintained by school districts regarding children with disabilities.

Section 1. Access Rights. (1) An LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall comply with a request without unnecessary delay and before any meeting regarding an IEP, dispute resolution meeting, [~~any ARC meeting~~] or due process hearing, and in no case more than forty-five (45) days after the request has been made.

(2) The right to inspect and review education records under this administrative regulation shall include:

(a) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent inspect and review the records.

(3) An LEA may presume that a parent has authority to inspect and review records relating to his child unless the LEA has been advised under a court order that the parent does not have the authority.

Section 2. Record of Access. An LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the LEA), including:

(1) The name of the party,

(2) The date access was given; and

(3) The purpose for which the party is authorized to use the records.

Section 3. Records on More than One (1) Child. If any education record includes information on more than one (1) child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of only that specific information.

Section 4. Types and Location of Information. An LEA shall provide parents, on request, a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the LEA.

Section 5. Fees. (1) An LEA may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records.

(2) The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

Section 6. Amendment of Records and Opportunity for Hearing. (1) A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the LEA shall respond within ten (10) school days [~~a reasonable period of time~~].

(2) If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1:140 shall apply.

Section 7. Consent. (1) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17 [~~12~~], parental consent shall be obtained before personally identifiable student information is:

(a) Disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or

(b) Used for any purpose other than meeting a requirement under 707 KAR Chapter 1.

(2) An LEA shall not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. [~~Section~~] 1232g.

(3) If a parent refuses to provide consent for release of personally identifiable information, a party may request a due process hearing pursuant to [~~under the provision of~~] 707 KAR 1.340 or comply with the FERPA.

Section 8. Safeguards. (1) An LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

(2) An LEA shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

(3) An LEA employee collecting or using personally identifiable information shall receive training or instruction regarding the requirements of this administrative regulation [~~707 KAR 1:360~~].

(4) An LEA shall maintain, for public inspection, a current listing of the names and positions of employees within the LEA who may have access to personally identifiable student information.

Section 9. Destruction of Information. An LEA shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

Section 10. Children's Rights. The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

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

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: April 10, 2007

FILED WITH LRC: April 11, 2007 at noon

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EDUCATION CABINET
Department for Libraries and Archives
Public Records Division
(As Amended at ARRS, October 9, 2007)

725 KAR 1:030. Scheduling public records for retention and disposal; procedures [~~Disposal or destruction of public records; procedure~~].

RELATES TO: KRS Chapter 171

STATUTORY AUTHORITY: KRS 171.450, 171.580

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules for the disposal or destruction of public records au-

thorized for disposal or destruction. KRS 171.580 authorizes the department to accept for deposit in the State Archives the records of any state or local agency that are determined by the department to have sufficient historical **or other** value to warrant their continued preservation **KRS 171.450(2) requires the department to enforce the provisions of KRS 171.410 to 171.740 by appropriate rules and regulations.** This administrative regulation establishes uniform procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records.

Section 1. State and local agencies shall follow the procedures for scheduling public records for retention and disposal described in Records Retention Scheduling: A Procedural Guide.

Section 2. State and local agencies shall follow the procedures for disposing of eligible public records described in Destruction of Public Records: A Procedural Guide.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Records Retention Scheduling: A Procedural Guide", September 2007; and

(b) "Destruction of Public Records: A Procedural Guide", September 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [~~Each constitutional, statutory, and executive authority of state and local government shall dispose of records as outlined in "State Records Retention and Disposal Schedules," a system developed by the Public Records Division, unless otherwise provided for in this administrative regulation.~~

~~Section 2. Authorization for the destruction of public records may be given in two (2) ways. It may be as listed in the unit State Records Retention and Disposal Schedule or it may be requested in writing by the agency for a specific request of an emergency nature. Authorization may also be given for the disposal of records for agencies pending completion of Records Retention and Disposal Schedules for their unit. Requests for the disposal or destruction of records must be submitted in writing by the agency head to the Director, Public Records Division, who will submit the request to the State Librarian for approval. No public record may be destroyed or disposed of without the final signature of approval of the State Librarian, Chairman of the State Archives and Records Commission. The State Librarian may designate the Director, Public Records Division, to approve disposal requests provided they are presented at the next commission meeting.~~

~~Section 3. No public record may be transferred from a state or local unit of government to another state or local unit of government or to a nonpublic agency unless provided for in the Kentucky Revised Statutes or unless the removal is approved by the State Librarian, who is also the Director of the Department for Libraries and Archives.~~]

WAYNE ONKST, State Librarian and Commissioner

APPROVED BY AGENCY: September 14, 2007

FILED WITH LRC: September 14, 2007 at noon

CONTACT PERSON: Richard N. Belding, P. O. Box 537, Frankfort, Kentucky 40602, phone (502) 564-8300, ext. 252, fax (502) 564-5773.

EDUCATION CABINET
Department for Libraries and Archives
Public Records Division
(As Amended at ARRS, October 9, 2007)

725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.450.

STATUTORY AUTHORITY: KRS 171.450.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations. This administrative regulation identifies schedules of public records approved and authorized for use by state and local agencies.

Section 1. **Schedules. (1) A Kentucky state government agency shall comply with:**

(a) The General Schedule for State Agencies;

(b) The General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Department of Agriculture Schedule;
2. Auditor of Public Accounts Schedule;
3. Commerce Cabinet Schedule;
4. Economic Development Schedule;
5. Education Cabinet Schedule;
6. Environmental and Public Protection Cabinet Schedule;
7. Finance and Administration Cabinet Schedule;
8. General Government Schedule;
9. Office of the Governor Schedule;
10. Cabinet for Health and Family Services Schedule;
11. Justice and Public Safety Cabinet Schedule;
12. Department of Law Schedule;
13. Legislative Branch Schedule;
14. Office of the Lieutenant Governor Schedule;
15. Personnel Cabinet Schedule;
16. Office of the Secretary of State Schedule;
17. Transportation Cabinet Schedule; or
18. Department of the Treasury Schedule.

(2) State universities and the Kentucky Community and Technical College System shall comply with the State University Model Schedule.

(3) Kentucky local government agencies shall comply with:

(a) The Local Government General Records Schedule;

(b) The General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Area Development District Schedule;
2. County Attorney Schedule;
3. County Clerk Schedule;
4. County Coroner Schedule;
5. County Judge Executive Schedule;
6. County Sheriff Schedule;
7. County Treasurer Schedule;
8. Jailer Schedule;
9. Lexington Fayette Urban County Government Schedule;
10. Library District Schedule;
11. Local Health Department Schedule;
12. Municipal Government Schedule; or
13. Public School District (K-12/Central Office) Schedule.

[~~Kentucky state government agencies shall use the:~~

~~(1) General Schedule for State Agencies and the General Schedule for Electronic and Related Records if the schedules are appropriate; and~~

~~(2) The specific schedules identified in Section 22(1)(c) through (u) of this administrative regulation if they are appropriate.~~

~~Section 2. The Department of Agriculture shall use the approved Records Retention Schedules for the Department of Agriculture, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 3. The Office of the Auditor of Public Accounts shall use the approved Records Retention Schedule for the Auditor of Public Accounts, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 4. The Commerce Cabinet shall use the approved Records Retention Schedules for the Commerce Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 5. The Economic Development Cabinet shall use the approved records retention schedules for the Economic Development Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 6. The Education Cabinet shall use the approved records retention schedules for the Education Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 7. The Environmental and Public Protection Cabinet shall use the approved records retention schedules for the Environmental and Public Protection Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 8. The Finance and Administration Cabinet shall use the approved records retention schedules for the Finance and Administration Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 9. General Government agencies shall use the approved records retention schedules for the General Government agencies, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 10. The Office of the Governor shall use the approved Records Retention Schedules for the Office of the Governor, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 11. The Cabinet for Health and Family Services shall use the approved records retention schedules for Cabinet for Health and Family Services, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 12. The Justice and Public Safety Cabinet shall use the approved records retention schedules for the Justice and Public Safety Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 13. The Department of Law shall use the approved records retention schedules for the Department of Law, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 14. Legislative Branch agencies shall use the approved Records Retention Schedules for the Legislative Branch, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 15. The Office of the Lieutenant Governor shall use the approved Records Retention Schedule for the Lieutenant Governor, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 16. The Personnel Cabinet shall use the approved records retention schedules for the Personnel Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 17. The Office of the Secretary of State shall use the approved Records Retention Schedules for the Secretary of State, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 18. The Transportation Cabinet shall use the approved records retention schedules for the Transportation Cabinet, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 19. The Department of the Treasury shall use the approved Records Retention Schedule for the Office of the State Treasurer, together with approved general records retention schedules for state agencies, if appropriate.~~

~~Section 20. State Universities and the Kentucky Community and Technical College System shall use the approved State University Model Records Retention Schedule, if appropriate.~~

~~Section 21. Kentucky local government agencies shall use:~~
~~(1) The Local Government General Records Schedule and the General Schedule for Electronic and Related Records if the schedules are appropriate; and~~
~~(2) The specific schedules identified in Section 22(1)(u) through (ii) of this administrative regulation for their respective offices if they are appropriate.]~~

Section 2. [~~22.~~] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "General Schedule for State Agencies", September 2007;
(b) "General Schedule for Electronic and Related Records Schedule", 2007;
(c) "Department of Agriculture Schedule", 2007;
(d) "Auditor of Public Accounts Schedule", 2007;
(e) "Commerce Cabinet Schedule", 2007;
(f) "Economic Development Cabinet Schedule", 2007;
(g) "Education Cabinet Schedule", 2007;
(h) "Environmental and Public Protection Cabinet Schedule", September 2007;
(i) "Finance and Administration Cabinet Schedule", 2007;
(j) "General Government Schedule", September 2007;
(k) "Office of the Governor Schedule", 2007;
(l) "Cabinet for Health and Family Services Schedule", September 2007;
(m) "Justice and Public Safety Cabinet Schedule", 2007;
(n) "Department of Law Schedule", 2007;
(o) "Legislative Branch Schedule", 2007;
(p) "Office of the Lieutenant Governor Schedule", 2007;
(q) "Personnel Cabinet Schedule", 2007;
(r) "Office of the Secretary of State Schedule" 2007;
(s) "Transportation Cabinet Schedule", 2007;
(t) "Department of the Treasury Schedule", 2007;
(u) "State University Model Schedule", September 2007;
(v) "Local Government General Records", 2007;
(w) "Area Development District Schedule", 2007;
(x) "County Attorney Schedule", 2007;
(y) "County Clerk Schedule", 2007;
(z) "County Coroner Schedule", 2007;
(aa) "County Judge Executive Schedule", 2007;
(bb) "County Sheriff Schedule", 2007;
(cc) "County Treasurer Schedule", 2007;
(dd) "Jailer Schedule", 2007;
(ee) "Lexington Fayette Urban County Government Schedule", 2007;
(ff) "Library District Schedule", 2007;
(gg) "Local Health Department Schedule", 2007;
(hh) "Municipal Government Schedule", 2007; [;] and
(ii) "Public School District (K-12/Central Office) Schedule", 2007.
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

WAYNE ONKST, State Librarian and Commissioner
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 14, 2007 at noon
CONTACT PERSON: Richard N. Belding, P. O. Box 537, Frankfort, Kentucky 40602, phone (502) 564-8300, ext. 252, fax (502) 564-5773.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Alcoholic Beverage Control
(As Amended at ARRS October 9, 2007)

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

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

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

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Schedule [~~"~~]A[~~"~~] Agent's, Solicitor's Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License", 01/01/07;
(b) "Schedule [~~"~~]B[~~"~~] Beer Retail Only License", 01/01/07;
(c) "Schedule [~~"~~]F[~~"~~] Food Related License", 01/01/07;
(d) "Schedule [~~"~~]I[~~"~~] Industrial Alcohol and Nonbeverage Alcohol Vendor License", 01/01/07;
(e) "Schedule [~~"~~]L[~~"~~] Limited 70% Food **Restaurants and Golf Courses Voted Wet by Special Elections**[~~Restaurant and Golf Course voted wet by special election License~~]", 6/26/07 [~~01/01/07~~];
(f) "Schedule [~~"~~]M[~~"~~] Manufacturer and Producer License", 01/01/07;
(g) "Schedule [~~"~~]R[~~"~~] Retail License", 01/01/07;
(h) "Schedule [~~"~~]S[~~"~~]Storage and Warehouse License", 01/01/07;
(i) "Schedule [~~"~~]S/R[~~"~~]Special Retail Sale;- Motel, Private Club, Riverboat, and Rail & Airliner License", 01/01/07;
(j) "Schedule [~~"~~]T[~~"~~]Transporter License", 01/01/07;
(k) "Schedule [~~"~~]Temporary[~~"~~]License", 01/01/07;
(l) "Schedule [~~"~~]Transitional[~~"~~]License", 01/01/07;
(m) "Schedule [~~"~~]W[~~"~~]Liquor and Wine Wholesaler and Beer Distributor License", 01/01/07;
(n) "Schedule [~~"~~]X[~~"~~]Airport, **Automobile Race Track,** Convention Center, Convention Hotel Complex, [~~Automobile Race Track, Horse Race Track,~~] Entertainment, Qualified Historic Site Destination Center, **Horse Race Track, and** License", [~~01/01/07~~];
(o) "ABC Form 714 Beer Brand Registration", 01/01/07; and
(p) "ABC Form 715 Distilled Spirits and Wine Brand Registration", 01/01/07.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) The applications are also available on the office's Web site, http://www.abc.ky.gov.

CHRISTOPHER L. LILLY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
FOR TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 15, 2007
CONTACT PERSON: Christopher L. Lilly, Executive Director, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:250. Notification requirements for drug benefits.

RELATES TO: KRS 304.17A-505, 304.17A-535
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-565
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to [~~provides that the commissioner may~~] promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-565 requires the executive director to enforce and carry out the provisions of KRS 304.17A-500 to 304.17A-570 by **promulgating** [~~adopting~~] necessary administrative regulations. This administrative regulation establishes notification requirements of a managed care plan if [~~when removing~~] a prescription medication is removed from its drug formulary, a [~~; when changing the~~]supply amount of [~~in~~] a prescription is changed, or [~~and when~~] prior authorization is added [~~required~~] for a prescription medication.

Section 1. Definitions. (1) "Drug formulary" means a list of prescription medications preferred for use by a managed care plan and dispensed through a participating pharmacy to an enrollee.
(2) "Enrollee" is defined in KRS 304.17A-500(5).
(3) "Maintenance prescription medication" means a prescription drug
(a) For which a managed care plan receives no less than:
1. Three [~~with at least three~~] (3) claims for a thirty (30) day supply within a [~~the last~~] four (4) month period of time; [~~months,~~] or
2. One [~~at least one~~] (1) claim for a ninety (90) day supply within a [~~in the last~~] six (6) month period of time [~~months~~], including a mail order prescription; and
(b) That [~~, and the drug~~] is required for maintenance therapy as determined by the prescribing provider.
(4) "Managed care plan" is defined in KRS 304.17A-500(9).

Section 2. Notification Requirements. (1) A managed care plan shall provide advance written notice to an enrollee of the following changes:
(a) The removal of a maintenance prescription medication from its drug formulary;
(b) A change that restricts or reduces the quantity or dosage of a prescription medication supplied when a prescription is filled; or
(c) A requirement for prior authorization of a prescription medication is added.
(2) A written notification pursuant to subsection (1) of this section shall be mailed to an enrollee:

(a) At least thirty (30) but no more [less] than sixty (60) days prior to the effective date of a change as listed in subsection (1)(a), (b), or (c) of this section for an enrollee who is dispensed a prescription for the drug within six (6) months prior to the notification date; and

(b) Within thirty (30) days following the effective date of a change as listed in subsection (1)(a), (b), and (c) of this section for an enrollee who is dispensed a prescription for the drug after the notification date required by **paragraph (a) of this subsection** [subsection 2(2)(a)] of this section.

(3) A written notification pursuant to subsection (1) of this section shall include:

(a) A clear explanation of the action being taken by the managed care plan;

(b) The name and phone number of a contact person to answer questions; and

(c) A description of the exceptions policy to the drug formulary pursuant to [developed in compliance with] KRS 304.17A-535(4).

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
FOR TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 25, 2007
FILED WITH LRC: July 26, 2007 at 3 p.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist II, Kentucky Office of Insurance 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone 502-564-6088, fax 502-564-2728.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS October 9, 2007)

910 KAR 1:240. Certification of assisted-living [assisted living] communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793 [194A.700-194A.729, 42 U.S.C. 3029]

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the cabinet [for Health Services] to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures [for the certification of assisted living communities. This administrative regulation establishes a process] related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification **process for** [of] assisted-living communities.

Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(2) "Activities of daily living" is defined by KRS 194A.700(1).

(3) "Assisted-living community" is defined by KRS194A.700(3).

(4) "Client" is defined by KRS 194A.700(4).

(5) "Certification review" means the process **of reviewing applications and issuing certification for** [in which the department begins certification of] an assisted-living community [through an application review process].

(6) "Functional needs assessment" means **the client data required by KRS 194A.713(1)(a) to be in a lease agreement** [client data as established in KRS 194A.713(1)(a)].

(7) "Instrumental activities of daily living" is defined by 194A.700(7).

(8) "Living unit" is defined by KRS 194A.700(8).

(9) "Temporary health condition" means a condition **that affects a client and for which health services are being provided as referred to in KRS 194A.711; and**

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility; or

(b) The client loses mobility after entering a lease agreement and is not expected to recover and the provided health services are hospice or similar end-of-life services.[in which a client:

(a) Is expected to regain mobility;

1. In accordance with KRS 194A.711; and

2. Before or after entering a lease agreement; or

(b) Receives hospice or similar end-of-life services and has been under a lease agreement prior to receiving those services.]

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, within at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets **offered** [a] special programming, staffing, or training in accordance with KRS 194A.715(1)(c);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living **units**, [unit] including **features that meet** the requirements of KRS 194A.703(1);

2. Central dining **area**;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(6);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification **becomes effective on a date other than July 1** [occurs after the effective date of this administrative regulation and before or after the required annual certification date specified in Section 3(1)(b) of this administrative regulation], the certification fee shall be prorated **by:**

(a) **Calculating the fee for a year by computing** twenty (20) dollars per living unit or the $300 minimum set forth in KRS 194A.707(6), **whichever is greater, but no more than the $1600 maximum set forth in KRS 194A.707(6);** [and]

(b) **Dividing the yearly fee by twelve (12) to obtain a monthly fee; and**

(c) **Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.** [Up to the annual certification date for the first year.]

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) **Has obtained its initial certification in accordance with** [is certified as specified in] Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation **required by** [of] Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee **required by** [of] Section 2(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall **reapply** [apply] for certification with the depart-

ment:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) **Not less than** [Within] sixty (60) days prior to the increase.

(2) If the increase in units occurs **before or after the required annual certification date,** [occur] [after the effective date of this administrative regulation] [and before or after the required annual certification date.] the certification fee shall be twenty (20) dollars per each additional unit **prorated in accordance with Section 2(2) of this administrative regulation**[, that total amount of which shall be prorated to the annual certification date with a minimum of 300 dollars and a maximum 1,600 dollars as set forth in KRS 194A.707(6)] [prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.]

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) **By following the procedures in Section 3** [In accordance with Section 3(1)] of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review within one (1) year of receipt of the DAIL-ALC-1, Assisted-Living Community Certification Application.

Section 7. On-Site Review of an Assisted-Living Community. (1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. **Completion of** employee orientation [completed] within ninety (90) days of the date of hire; and

b. In-service education;

(i) Pursuant to KRS 194A.719; and

(ii) [That shall be] Provided on an annual basis [as required for an employee to perform his or her assigned duties];

(b) Verification [of documentation] of compliance [in accordance] with KRS 194A.703;

(c) Review of client records including:

1. A completed client functional needs assessment to ensure that the client **met the eligibility requirements for assisted-living pursuant to KRS 194A.711 prior to finalizing a lease agreement;** [meets the eligibility for assisted-living criteria:

a. Pursuant to KRS 194A.711; and

b. Prior to finalizing a lease agreement.]

2. A functional needs assessment that reflects a client's ongoing ability pursuant to KRS 194A.711 to perform activities of daily living and instrumental activities of daily living;

3. Current personal preferences and social factors; and

4. A signed lease with all attachments;

(d) Review of an assisted-living community's policies and procedures **for compliance** [:

1. In accordance] with KRS 194A.700 through 194A.729 **using** [; and

2. With] a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(e) Review of an assisted-living community's service provision and practices related to:

1. Provisions of KRS 194A.705;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation:

a. At the department's request;

b. From a licensed health care professional defined by KRS 216.300(1);

c. Requested of the client by the assisted-living community; and

d. That states:

(i) The client has a temporary health condition pursuant to KRS 194A.711(1); and

(ii) How the assisted-living community shall ensure that the client is not a danger, if hospice or similar end-of-life services are provided; and

4. **Compliance with KRS 194A.713(11), 194A.715(1)(c), 194A.719(10), and 216.595 regarding special programming, staffing, or training** [Special programming, pursuant to KRS 194A.713(11), 194A.715(1)(c), and 194A.719(10),] that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's ongoing abilities as specified in paragraph (c)2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

(f) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(7).

(3) The department may, pursuant to KRS 194A.707(7), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall schedule and hold a meeting **with the assisted-living community manager or designee** to discuss the preliminary results of the on-site visit [between:

(a) The assisted-living community manager or designee, and

(b) Department representative].

Section 8. Assisted-Living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance **with** [of] KRS 194A.700 through **194A.729** [729] or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction; and

2. Within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction [located] on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction and submit the form to the department[:

~~(a) For the elimination or correction of the non-compliance;~~

~~(b)~~] within fifteen (15) business days of receipt of the notice of noncompliance.[; and]

(b) The assisted-living community [~~(c) That~~] shall specify **in the plan** the dates by which the non-compliance shall be corrected.

(3) The department shall notify the applicant in writing **within fifteen (15) business days of receipt of the plan of correction:**

(a) Whether the plan of correction is approved or not approved; **and**

(b) The reasons for the department's decision.

[~~(a) Within fifteen (15) business days of receipt of the plan of correction; and~~

~~(b) With explanation for actions taken~~]

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate **in a public area** [~~as specified in subsection (8) of this section~~].

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of **notice the plan was not approved** [~~the nonapproved plan of correction~~]

(6) If the department determines after reviewing the amended plan of correction that certification shall be denied, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the:

a. Department; and

b. A representative of the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address an issue of noncompliance in question, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 11 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) The department may conduct additional on-site visits pursuant to KRS 194A.707(7).

Section 9. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a) An assisted-living community knowingly employs any individual convicted of **an offense prohibited by** [~~a charge specified in~~] KRS 216.789(1) or 216.789(2) **as** disclosed by:

1. The individual's employment application; or

2. A criminal records check; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 8(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Section 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years; or

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually.

Section 10. Collection of Fees and Fines. (1) An **entity or business found to be in violation of KRS 194A.723 and assessed a penalty** [~~entity in violation of KRS 194A.723~~] shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department **may** [shall] appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the [~~review of the architectural drawings, lease agreement, and~~] notification of conditional compliance to a lender **after review of the architectural drawings and lease agreement**, pursuant to KRS 194A.729, shall be $250.

Section 11. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, as specified in Section 9 of this administrative regulation, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) **To request an administrative hearing, an applicant shall send a written request** [~~An applicant shall make a request for an administrative hearing in writing~~] to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) **After** [~~Upon~~] receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The [~~date the~~] denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection 5(b) of this section, not to exceed an additional fifteen (15) days.

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

(a) "DAIL-ALC-1 Assisted-Living Community Certification Application", edition 11/07;

(b) "DAIL-ALC-2 Assisted-Living Community Certification Check List", edition 11/07; and

(c) "DAIL-ALC-3 Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 11/07.

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

[~~Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted living community.~~

~~(2) "Assisted living community" is defined in KRS 194A.700.~~

~~(3) "Client" is defined in KRS 194A.700.~~

~~(4) "Living unit" is defined in KRS 194A.700.~~

~~(5) "Office" means Office of Aging Services as defined in KRS 194A.700.~~

~~(6) "Plan" means an assisted living community's written plan for correcting noncompliance with the provisions of KRS 194A.707 or this administrative regulation.~~

~~(7) "Cabinet" means Cabinet of Health Services.~~

~~Section 2. Certification of Assisted Living Community. (1) Representatives of the office conducting certification reviews shall not disclose information made confidential by state or federal law or regulation. A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.~~

~~(2)(a) An applicant seeking initial certification for an assisted living community shall submit a completed application at least sixty~~

~~(60) days prior to the planned opening.~~

~~(b) An applicant seeking annual certification of an assisted living community shall apply at least sixty (60) days prior to the expiration date of the current certification.~~

~~(c) Each applicant shall file an OAS-ALC-1 Assisted Living Community Certification Application, with the Cabinet for Health Services, Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(d) The application shall require the following:~~

~~1. The name, address and contact person for the owner and, if applicable, for the management company with primary contractual responsibilities for operating the assisted living community;~~

~~2. The mailing address and physical address of the assisted living community;~~

~~3. A copy of a blank lease agreement and any documents which are incorporated by reference into the lease agreement if filing an initial application or if there has been a significant change in the lease since it was last submitted;~~

~~4. A copy of written material used to market the assisted living community, including material that markets a special programming, staffing or training;~~

~~5. If an existing assisted living community is exempt under KRS 194A.721:~~

~~a. A copy of the current building permit;~~

~~b. Evidence of the date when construction was begun; and~~

~~c. The expected date of completion;~~

~~6. The floor plan of the assisted living community identifying the:~~

~~a. The living units;~~

~~b. Central dining;~~

~~c. Laundry facility; and~~

~~d. Central living room; and~~

~~7. A nonrefundable certification fee as established in KRS 194A.707(6).~~

~~(3) Within ten (10) days of receipt by the office of a completed application and the appropriate fee, payable by check made out to the Kentucky State Treasurer, the office shall:~~

~~(a) Notify the applicant that the assisted living community is certified to operate pursuant to KRS 194A.707(2) or (3);~~

~~(b) Begin the certification review process; and~~

~~(c) Schedule an on-site visit.~~

~~(4) Current copies of required building and life safety code certificates or permits shall be reviewed during the certification review process.~~

~~(5) Prior to completing an on-site visit at an assisted living community, an office representative shall schedule and hold a meeting between the assisted living community manager or designee and a representative from the office to discuss the preliminary results of the on-site visit.~~

~~(6) The employee orientation and in-service training required by KRS 194A.719 shall be completed within six (6) months of the date of employment.~~

~~(7) Compliance and noncompliance with KRS 194A.707 and this administrative regulation shall be documented by the office on the OAS-ALC-2 Assisted Living Communities Certification Check List.~~

~~(8) Areas of noncompliance shall be submitted in writing by the office to the assisted living community within ten (10) business days upon completion of the on-site visit. The assisted living community shall submit in writing a plan to the office within ten (10) business days of receipt of notice of noncompliance.~~

~~(a) The office shall notify the applicant in writing within ten (10) business days whether the plan is approved or not approved together with the reasons for the actions taken.~~

~~(b) If the plan is not approved, the applicant shall amend the plan and submit in writing to the office within ten (10) business days of receipt.~~

~~(9) If the office determines after reviewing the amended plan that certification shall not be approved, the applicant shall be notified, by certified mail, within ten (10) days of receipt of the amended plan, of the right to appeal the determination. A request for an administrative hearing shall be made in writing to the office within thirty (30) days of receipt of a written notice of nonapproval of an application for certification.~~

~~(10) Upon receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.~~

~~(11) The date of revocation, suspension, or denial of an application is effective upon final decision of the cabinet secretary pursuant to KRS Chapter 13B.~~

~~Section 3. Posting Requirement. The office shall provide an assisted living community approved for certification with a certificate verifying its status, and the assisted living community shall post it in a public area.~~

~~Section 4. Change of Information. (1) An assisted living community shall notify the office in writing within sixty (60) days of an increase or decrease in the number of living units.~~

~~(2) An assisted living community shall notify the office in writing within thirty (30) days of a name or mailing address change for the assisted living community or the applicant.~~

~~(3) An assisted living community shall notify the office in writing at least thirty (30) days prior to termination of operation.~~

~~Section 5. Change of Status. If there is a change of more than fifty (50) percent interest in ownership of an assisted living community, the new owner shall apply for certification within thirty (30) days after the effective date of the change of ownership.~~

~~Section 6. Collection of Fees and Fines. (1) An entity in violation of KRS 194A.723 shall make a check payable to the Kentucky State Treasurer and shall mail it to the Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(2) A party aggrieved by a determination of the office shall appeal the determination or the fine in accordance with KRS Chapter 13B.~~

~~(3) The fee established for the review of the architectural drawings, lease agreement, and notification of conditional compliance to a lender pursuant to KRS 194A.720 shall be $250.~~

~~Section 7. Materials Incorporated by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Assisted Living Community Certification Application", Office of Aging Services, 08/2000, OAS-ALC-1; and~~

~~(b) "Assisted Living Communities Check List", Office of Aging Services, 08/2000, OAS-ALC-2.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DEBORAH S. ANDERSON, Commissioner
MARK A. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: September 13, 2007

FILED WITH LRC: September 14, 2007 at 10 a.m.

CONTACT PERSON. Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS October 9, 2007)

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 194A.050, 205.200, 205.210, 205.2001 [~~205.200(2), 205.210(1)~~], 205.211, [~~205.2001,~~] 7 C.F.R. 1464.201, 45 C.F.R. 233.20(a)(13), Parts 260-265, 400.66(d), 8 U.S.C. 1183a, 20 U.S.C. 1088(a)(1), 1141(a), 2471(4)(c)- (d), 25 U.S.C. 459, 1261, 1401, 1408, 29 U.S.C. 723(a)(5), 38 U.S.C. 1805, 1815, 42 U.S.C. 601-619, 1381-1385, 1771, 1775, 3001, 4950-5084, 8621, 10602(c) [~~602~~]

STATUTORY AUTHORITY: KRS 194A.050(1) [~~194B.050(1)~~], 205.200(2), 42 U.S.C. 601-619 [~~et seq., EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A 050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services is required to administer the public assistance programs.~~] KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 U.S.C. 601 to 619 [~~et seq~~]. This administrative regulation sets forth the standards of [~~the~~] need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 11 [~~10~~].

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing K-TAP payment that includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in:

1. Provider;

2. Number of hours of care;

3. Number of individuals for whom care is given; or

4. Amount charged; or

(f) Change in farm cropping arrangement or type of self-employment activity.

(4) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Electronic benefit **"Transfer" or "EBT"** [~~transfer (EBT)"~~] means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) [~~(8)~~] "Excluded income" means income that is received but not counted in the gross income test.

(10) [~~(9)~~] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) [~~(10)~~] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;

2. A general educational development program; or

3. A literacy program;

(b) A semester system in a college or university of:

1. Twelve (12) semester hours or more; or

2. Six (6) semester hours or more during the summer term;

(c) The equivalent in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(12) [~~(11)~~] "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 9[~~8~~] of this administrative regulation.

(13) [~~(12)~~] "Kentucky Transitional Assistance Program" or "KTAP" means a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(14) [~~(13)~~] "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(15) [~~(14)~~] "Lump sum income" means income that does not.

(a) Occur on a regular basis; or

(b) Represent accumulated monthly income received in a single sum.

(16) [~~(15)~~] "Minor" means a person who is under the age of eighteen (18).

(17) [~~(16)~~] "Minor parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(18) [~~(17)~~] "Part-time employment" means employment of:

(a) Less than thirty (30) hours per week;

(b) Less than 130 hours per month[~~; or~~

~~(c) Not employed throughout the entire month.~~]

(19) [~~(18)~~] "Part-time school attendance" means a workload that is less than full-time school attendance.

(20) [~~(19)~~] "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, **causing** [~~that causes~~] a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) [~~(20)~~] "Recoupment" means recovery of an overpayment of an assistance payment.

(22) [~~(21)~~] "Sanctioned individual" means a person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(23) [~~(22)~~] "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(24) [~~(23)~~] "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to[~~:~~

~~(a)~~] 42 U.S.C. 1381 to 1385 to the aged, blind and disabled[~~;~~

~~(b) 42 U.S.C. 1382e; or~~

~~(c) 42 U.S.C. 1382~~].

~~(25) "System error" means an error resulting from a malfunction at any point in the EBT redemption process.~~

~~(26)~~] [~~(24)~~] "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(26) [~~(27)~~] [~~(25)~~] "Workforce Investment Act" or "WIA" means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment, **as established by 29 U.S.C. 2801**.

(27) [~~(28)~~] [~~(26)~~] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:

(a) A dependent child;

(b) A child's parent living in the home with the dependent [~~needy~~] child who is:

1. Eligible for K-TAP; or

2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 20 [~~19~~];

(c) An eligible sibling living in the home with a dependent [~~needy~~] child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or

(d) An eligible child who is:

1. In full-time school attendance or part-time school attendance; and

2.a. Sixteen (16) through eighteen (18) years of age; or

b. A minor parent.

(2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:

(a) Available to the benefit group; and

(b) Owned in whole or in part by.

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group shall not be in excess of $2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.

(a) Resources from the following individuals shall be excluded from consideration:

1. A recipient of SSI or the state supplementation program living in the home;

2. A child excluded from the K-TAP grant;

3. An individual not receiving assistance but living in the home including:

a. The stepparent;

b. The parent [~~Parent~~] or legal guardian of a minor parent;

c. The spouse of a nonresponsible specified relative; or

d. The spouse of a minor dependent child.

(b) The following resources shall not be included in the $2,000 resource limit:

1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;

2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

3. An excluded income payment, pursuant to Section 5 of this administrative regulation;

4. Principal and accrued interest of an irrevocable trust during a period of unavailability;

5. Prepaid burial funds;

6. Cash surrender value of all burial insurance policies per family member;

7. Principal of a verified loan;

8. Up to $12,000 to Aleutians and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

9. Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;

10. Earned income tax credit payment in the month of receipt and the following month;

11. A payment received from the Radiation Exposure Compensation Trust Fund;

12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;

13. Up to a total of $5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section; and

14. A payment received from the National Tobacco Growers Settlement Trust[~~; and~~

~~15. A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201~~].

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The [~~It is determined by the cabinet that the~~] transfer was made expressly for the purpose of qualifying for assistance; and

2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d)1. If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month.

2. the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a)1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the K-TAP applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the balance shall be divided evenly by the number of owners and the K-TAP applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall [~~may~~] be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;

2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an [~~the~~] exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and

2. funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;

b. Fees, books, supplies and equipment required for a course of instruction at an eligible educational institution; and

c. An eligible educational institution that shall be an:

(i) Institution pursuant to 20 U.S.C. 1088(b)(1) [~~(a)(1) or 1141(a)~~]; or

(ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (10) [~~2471(4)(C) or (D)~~];

2. First home purchase that includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance [~~Assistance~~] of an experienced entrepreneurial advisor if needed [~~may be required~~]; or

4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or

2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for K-TAP, the following shall apply: (1) Gross income test:

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard and shall include:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2.015;

3. Income of a sanctioned or penalized individual; and

4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. A stepparent living in the home;

c. The spouse of a minor dependent child living in the home; or

d. An alien's sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible;

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively;

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;

(b) The ineligibility period shall be

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions. (1) Gross non-K-TAP income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;

2. Sanctioned or penalized individual;

3. Natural parent;

4. Spouse of a dependent child;

5. Parent of a minor parent living in the home with the benefit group; or [~~and~~]

6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (5) of this section.

(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an alien sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) The difference between the standard of need and the payment maximum for the benefit group, pursuant to Section 9 of this administrative regulation, if a member of the benefit group receives a WIA stipend,

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S C. 1771;

3. Special food service program for a child pursuant to 42 U.S C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S C. 3001; and

5. The monthly food stamp allotment;

(f) Reimbursement for transportation in performance of an employment duty, if identifiable;

(g) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(h) Nonemergency medical transportation payment;

(i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

(j) Educational grant, loan, scholarship, and work study income, including:

1. Payment obtained and used under a condition that precludes the recipient's use for current living cost; and

2. An education grant or loan to an undergraduate made or insured under a program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs;

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Funds [~~Receipt~~] distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as [~~volunteer serving under a program pursuant to 42 U.S.C. 5001 and 5011,~~

~~including~~] a:

1. [~~Foster grandparent;~~

~~2.~~] Senior health aide; or

2. [~~3. Senior companion; or~~

~~4.~~] Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 [~~"Volunteers in Service to America" (VISTA) participant pursuant to 42 U.S.C. 1461~~] if less than the minimum wage under state or federal law, whichever is greater including: [;]

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(t) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The first fifty (50) dollars of child support payment;

(w) Earnings of an individual attending school who is age nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring monetary gifts totaling thirty (30) dollars or less per month per individual;

(z) The principal of a verified loan;

(aa) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2.015;

(ee) The advance payment or refund of earned income tax credit;

(ff) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Interest and dividend income;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment made from the Agent Orange Settlement Fund;

(kk) K-TAP payment including back payment;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 11 [~~10~~];

(mm) Payment made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(qq) A payment received from the National Tobacco Growers Settlement Trust;

(rr) [~~A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201;~~

~~(ss)~~] A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ss) [~~(tt)~~] A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(tt) [~~(uu)~~] A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(uu) [~~(vv)~~] A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4);

(vv) [~~(ww)~~] Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); and

(ww) [~~(xx)~~] Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied:

(a) Work expense standard deduction of ninety (90) dollars for full-time and part-time employment;

(b) On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A sanctioned individual whose earned income is considered available to the K-TAP household;

d. A K-TAP case that is otherwise ineligible for K-TAP without the benefit of the disregard for child care, at the option of the recipient; or

e. The month of application for K-TAP benefits; and

2. Not exceed:

a. $175 per month per individual for full-time employment;

b. $150 per month per individual for part-time employment; or

c. $200 per month per individual for child under age two (2);

(c) Child support payment received and retained until notification of eligibility for K-TAP is received;

(d) Child support payment assigned and actually forwarded or paid to the cabinet; and

(e) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group calculated as follows:

1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and

3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and

(f) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings calculated as follows:

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient; and

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case[,] and [~~if different,~~] the member employed, if different, is out of town for the entire ten (10) day report period.

(5) Changes in income and resources of the benefit group, that contains a member who is participating in the wage supplementation component of Kentucky Works pursuant to 921 KAR 2:370,

shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child,

(c) The spouse of a specified relative other than a parent;

(d) A parent of a minor parent. [~~A parent barred from receiving assistance due to failure to meet alien status; or~~

(e)](2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income; and

(b)1. An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the K-TAP eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual [;

~~4. of an SSI recipient who is listed in subsection (1) of this section; or~~

~~5. A retroactive SSI payment, that is counted in determining eligibility and the amount of payment to the K-TAP unit in the month received, in a subsequent month.~~]

(3) [~~The income of a sanctioned individual shall not be eligible for a deduction listed in this section.~~

~~(4)~~] A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent.

Section 8. Alien Sponser Income and Resources. (1)(a) For the purpose of this section, the alien's sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b)This subsection and subsections (2) though (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien shall be ineligible for a month If [~~in that~~] adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, that has executed an affidavit of support, the alien shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:

a. The sponsor; and

b. Other person living in the household:

(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for K-TAP;

3. An amount paid by the sponsor to a nonhousehold member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;

4. Actual payment of alimony or child support paid to a nonhousehold member; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a K-TAP applicant in this state, less $1,500.

(7)(a) For a sponsored alien who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien.

(b) The sponsor's obligation shall be available until the:

1. Immigrant:

a. Becomes a United States citizen;

b. Is credited with forty (40) quarters of work; or

c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or

2. sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S C. 1183a.

(8)(a) If an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the month of the determination if an alien is determined indigent.

(b) An alien shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

2. Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual including the sponsor, the alien is unable to obtain food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or

2. Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or

2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum. (1) The K-TAP payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	$186	$401
2 persons	$225	$460
3 persons	$262	$526
4 persons	$328	$592
5 persons	$383	$658
6 persons	$432	$724
7 or more persons	$482	$790

(b) The gross income limit shall be as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	$742
2 Persons	$851
3 Persons	$974
4 Persons	$1096
5 Persons	$1218
6 Persons	$1340
7 or more Persons	$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used.

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period,

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) Biweekly amount by two and one-sixth (2 1/6); or

(iii) Semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b.(i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

(ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar;

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of unstable [~~nonstable~~] unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation, and

(c) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case with:

1. Earned or unearned income other than self-employment; or

2. Income from a self-employment enterprise that has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for a case with a self-employment enterprise that has been in existence for at least one (1) year;

(c) If the agency becomes aware of a change in a circumstance; or

(d) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. K-TAP Recoupment. The following provisions shall apply for recoupment of a K-TAP overpayment.

(1) Necessary action will be taken promptly to correct and recoup an overpayment.

(2) An overpayment shall be recovered:

(a) From an adult claimant, whether or not currently receiving K-TAP benefits:

1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;

2. After administrative and judicial remedies have been exhausted or abandoned; and

3. Including assistance paid:

a. Pending the hearing decision; or

b. Due to cabinet error.

(b) Through:

1. Repayment by the claimant to the cabinet;

2. Reduction of future K-TAP benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation; [~~or~~]

3. Civil action in the court of appropriate jurisdiction; or [.]

4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, the overpayment balance shall be reduced by an amount equal to the expunged benefits.

(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

Section 12. Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).

(2) An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:

(a) Pursuant to 45 C.F.R. 233.20(a)(13); and

(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.

Section 13. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily:

(a) Return a benefit payment, or

(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement requesting a written statement requesting this option [~~check~~] to avoid an overpayment if the:

1. Case is totally ineligible for the month the payment [~~check~~] is issued; and

2. has not been reduced for recoupment of a previous overpayment.

(2) If a payment [~~check~~] is voluntarily returned, the cabinet shall:

(a) Determine whether or not the recipient is due a refund as described in Section 14 of this administrative regulation; and

(b) Complete a PA-30.2, [~~"Payment~~] Receipt For Returned Benefits [~~"~~] to verify for the K-TAP recipient the payment [~~check~~] has been returned

Section 14. Refund A recipient shall be due a refund in the following situations:

(1) An amount in excess of the actual overpayment is recouped;

(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or [~~and~~]

(3) A K-TAP payment [~~check~~] that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 15. Correction of Underpayments. The following provisions shall apply to a K-TAP payment:

(1) An underpayment shall be promptly corrected to:

(a) A current K-TAP recipient; or [~~and~~]

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred;

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group;

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:

(a) Month the payment is paid; or

(b) Next following month.

Section 16. Incorporation by Reference. (1) "PA-30 2, [~~Payment~~] Receipt For Returned Benefits", edition 12/07, [~~01/05"~~] is incorporated by reference.

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: August 15, 2007

FILED WITH LRC: August 15, 2007 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS October 9, 2007)

921 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220, 205.245, 42 U.S.C. 601-619 [~~et seq.~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.220, 205.245, [~~194B.050(1),~~] 42 U.S.C. 601-619 [~~et seq., EO 98-731~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.220 prescribes who is eligible for public assistance **and requires the cabinet to prescribe by administrative regulation the time and manner of payments of public assistance grants for eligible individuals. KRS 205.245 provides for a money payment to the needy aged, needy blind, and needy permanently and totally disabled. This administrative regulation establishes the time and manner of payments for the Kentucky Transitional Assistance Program and Kentucky Works in conformity with the Social Security Act, 42 U.S.C. 601 - 619, and federal regulations. It also establishes the time and manner of State Supplementation payments and Mental Illness or Mental Retardation (MIMR) Supplement Program payments.** [~~The Cabinet for Health and Family Services shall, under the provisions of KRS Chapter 205, administer the assistance programs of Kentucky Transitional Assistance Program and Kentucky Works in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations, and a state funded program of a money payment to a person who is aged, blind and has a disability who is disadvantaged by the implementation of the Supplemental Security Income (SSI) Program. In addition, KRS 205.245 provides for a money payment to a person who is aged, blind or has a disability. The Cabinet for Health and Family Services shall make a payment pursuant to 921 KAR 2:015, for a person with mental illness or mental retardation. This administrative regulation sets forth the time and the manner in which a payment is made~~]

Section 1. Authorization of Kentucky Transitional Assistance Program [~~Assistance~~] Payments. (1) Method of payment.

(a) A payment may be issued monthly **by**:

1. **Check** [~~By~~] [~~Monthly by~~] [~~check~~], [~~or~~]

2. Electronic benefit transfer (EBT); or

3. **Direct deposit** [~~Deposited directly~~] into a recipient's checking account upon completion by the recipient of the Direct Deposit Authorization, Form PA-63; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) A Kentucky Transitional Assistance Program approval shall not be made for a period prior to the date of application.

(b) The effective date of an initial payment for a Kentucky Transitional Assistance Program approval shall be the date an application is filed if eligibility factors are met as of that date.

(c) If eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payment.

(a) Except in a situation pursuant to paragraph [~~paragraphs~~] (b) [~~, (c), and (d)~~] of this subsection, a subsequent Kentucky Transitional Assistance Program payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(b) [~~A subsequent Kentucky Transitional Assistance Program payment shall not be made to an individual for a month in which the amount of the benefit payment, prior to a recoupment, would be less than ten (10) dollars.~~

~~(c) An otherwise eligible individual shall be deemed a recipient of Kentucky Transitional Assistance Program for another purpose if a Kentucky Transitional Assistance Program check is not received pursuant to paragraph (b) of this subsection.~~

~~(d)~~] A special payment shall be issued:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2 For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payment.

(a) A Kentucky Transitional Assistance Program payment **shall be** [is] unconditional and [is] exempt from a remedy for the collection of a debt, lien or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services may initiate recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016.

(c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error as defined in 921 KAR 2:016.

(5) EBT Account Inactivity.

(a) If an EBT account has not been debited in 365 days, the cabinet shall:

1. Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is 365 days in the past; and

2. Notify the household in writing:

a. That the household's EBT account has not been debited in the last 365 days; and

b. Of the amount of EBT benefits that have been expunged. (b) If a recipient debits the EBT account, the expungement process shall cease.

(6) [~~(5)~~] Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant, **except as provided in paragraph (b) of this subsection**.

(b) A protective payment may be made to a third party payee if a[~~:~~

~~1. A~~] determination has been made by the Cabinet for Health and Family Services, **based on evidence** that poor money management is contributing to the unsuitability of the home for a needy child.[~~;~~

~~2. The payee has refused, without good cause pursuant to 921 KAR 2:006 and 921 KAR 2:370, to participate in the Kentucky Works Program or the Child Support Program, or~~

~~3. A minor teenage parent has not complied pursuant to 921 KAR 2:006, Section 18. The protective payment to a third party payee shall be for the eligible child of the minor teenage parent.~~]

(c) The Department for Community Based Services may request an accounting from a third-party payee in which the use of Kentucky Transitional Assistance Program funds shall be described pursuant to PA-148, Protective Payee Agreement.

(d) A Kentucky Transitional Assistance Program payment for the month of death may be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(e) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(7) [~~(6)~~] A Kentucky Transitional Assistance Program payment [~~check~~] **shall** [~~may~~] not be issued to an eligible Kentucky Transitional Assistance Program recipient who is a wage supplementation participant pursuant to 921 KAR 2:370, Section 2(2)(c)11. The amount of the eligible Kentucky Transitional Assistance Program payment for the benefit group containing a wage supplementation participant may be diverted to the contracted employer of the wage supplementation participant.

Section 2. Supportive Services for Kentucky Works Participants. A supportive services payment for a Kentucky Works participant shall be made according to the type of service provided, as follows:

(1) A child care payment shall be issued pursuant to 922 KAR 2:160.

(2) Transportation.

(a) A transportation payment shall be made prospectively for an anticipated transportation cost.

(b) A transportation payment pursuant to 921 KAR 2:017 may be made directly to the Kentucky Transitional Assistance Program recipient.

(3) Other approved supportive services payments shall be made:

(a) Directly to the provider; and

(b) Within thirty (30) days of receipt of appropriate verification of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of a State Supplementation Payment. (1) Method of payment.

(a) A payment shall be issued monthly **by:**

1. **Check** [~~By check~~]; **or** [~~and~~]

2. **Direct deposit** [~~Deposited directly~~] into a recipient's checking account upon completion by the recipient of the PA-63, Direct Deposit Authorization form; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for State Supplementation Program approval shall be the first day of the month in which:

1. An application is filed; and

2. Eligibility factors are met.

(b) A State Supplementation Program approval shall be made for the entire month of which eligibility factors are met.

(3) Subsequent and special payment.

(a) A subsequent State Supplementation Program payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) A State Supplementation Program money payment **shall be** [is] unconditional and is exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services **shall** [~~may~~] initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment **shall** [~~may~~] [~~usually~~] be issued in the name of the eligible applicant except as provided in paragraph (b) of the subsection.

(b) A money payment may be issued to the:

1. Legally appointed committee or guardian; or

2. Person serving as the representative payee for another statutory benefit such as SSI.

(c) A State Supplementation Program payment for the month of death may be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons With Mental Illness or Mental Retardation (MIMR) Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly; **and**

2. By the last day of the month following the month that the certified quarter ends.

(b) The training reimbursement payment for the MIMR Supplement Program shall be issued within thirty (30) days of receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(2) Initial payment.

(a) Following the notification of the Cabinet for Health and Family Services by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a quarter that certification requirements pursuant to 921 KAR 2:015 are met.

(b) If a Type A citation issued from the Office of Inspector General occurs, payment shall be made only for eligible months pursuant to 921 KAR 2:015.

(3) A subsequent payment shall be made for a month within a

quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, pursuant to 921 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

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

(a) "PA-63, [“]Direct Deposit Authorization", edition 12/07 [~~11/98~~]; and

(b) "PA-148, [“]Protective Payee [~~Payment~~] Agreement", edition 12/07 [~~11/98~~].

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY: August 15, 2007

FILED WITH LRC: August 15, 2007 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS October 9, 2007)

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

RELATES TO: KRS 17.165, 199.011(2), 199.898[~~(1), (2)~~], 199 8982, 199.8994, 314 011(5), 45 C.F.R. 98, [~~42 U.S.C.~~] 601-619, 9858

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes **requirements for providers to participate** [~~the criteria for a child care provider to register~~] in the Child Care Assistance Program **and the application procedures**.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Closed" means the **provider is no longer a registered program provider** [~~discontinuance of registration status without a penalty to the provider~~].

(3) "Denied" means the application for **program** registration is not approved and the applicant **will be penalized** [~~incurs a penalty~~].

(4) "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(5) "Revoked" means the **provider is no longer a registered provider and the provider will be penalized** [~~discontinuance of registered provider status with a penalty~~].

(6) "Withdrawn" means the application **for program registration** is removed from consideration without a penalty.

[~~(3) "Infant" means a child who is less than twelve (12) months of age.~~

~~(4) "Related" means that a child care provider and a child under the provider's care have one (1) of the following familial or legal relationships:~~

~~(a) Parent and biological or adopted child,~~

~~(b) Stepparent and stepchild;~~

~~(c) Grandparent and grandchild;~~

~~(d) Great-grandparent and great-grandchild;~~

~~(e) Sibling,~~

~~(f)1. Aunt or uncle, and~~

~~2. Niece or nephew; or~~

~~(g) Child custodian and child.~~]

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

(a) Directly by:

1. Telephone; or

2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP), as defined in 922 KAR 2:160, Section 1(6).

(2) An individual **may** [~~who intends to apply for registration as a child care provider shall have the right to~~] apply or reapply for child care provider registration on the same day that the notice **of intent to apply** in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To **apply** [~~receive a decision regarding a request~~] for child care provider registration in CCAP, an individual shall, [~~complete and file an application and documentation required in accordance with subsection (5) of this section with the cabinet or its designee~~] within thirty (30) calendar days **of giving** [~~the~~] notice **of intent to apply** [~~made~~] pursuant to subsection (1) of this section:[~~.~~

~~(5) The cabinet or its designee shall consider an individual as an applicant for child care provider registration if the individual:~~]

(a) **Submit** [~~Submits~~]:

1 a. A **completed** DCC-95, Application for Registered Child Care Provider in Provider's Home; or

b. A **completed** DCC-96, Application for Registered Child Care Provider in Child's Home;

2. Written verification from a health professional that:[~~:~~]

a. The individual is free of active tuberculosis; and

b. The individual is in good general health and able to care for children;

3. A **completed** DCC-94A, Registered Child Care Provider Information Form; and

4. **A completed** [An] IRS W-9, the Request for Taxpayer Identification Number and Certification;

(b) **Show** [~~Shows~~] proof by photo identification or birth certificate that the individual is eighteen (18) years or older; and

(c) **Meet** [~~Meets~~] the requirements of KRS 17.165(5), **as shown by** including:

1. A criminal records check conducted by the Kentucky State Police or Administrative Office of the Courts within the previous twelve (12) months on the individual;

2. A child abuse and neglect check in accordance with 922 KAR 1:470 on the individual; and

3. Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee.

(5)[~~(6)~~] Within ninety (90) calendar days of giving [~~the~~] notice

of intent to apply for registration as a child care provider in CCAP **pursuant to** [~~, in accordance with~~] subsection (1) of this section, the applicant shall provide verification that the applicant has obtained three (3) hours of training approved by the cabinet or its designee, in the areas of:

(a) Infant and child first aid;

(b) Recognition of child abuse and neglect; and

(c) Health and safety standards.

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides child care services in the provider's home, the provider shall:

(a) Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; and

(b) Provide written verification that each member of the provider's household who is age eighteen (18) or older **meets the** [~~has met~~] requirements in KRS 17.165 by the member's submission to a:

1. Criminal records check conducted by the Kentucky State Police or Administrative Office of the Courts;

2. Child abuse and neglect check in accordance with 922 KAR 1:470; and

3. Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee.

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

(a) Heat;

(b) Light; and

(c) Ventilation.

(3) Each floor of the registered child care provider's home used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(4) The registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:

(a) Cleaning supplies, poisons, paints, **and** insecticides;

(b) Knives, scissors, and other sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other like equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Alcoholic beverages, and

(f) Medications.

(5) Firearms and ammunition shall be stored and locked in [~~separate~~] locations **separate from each other and** inaccessible to a child in care.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8) The registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).

(9) Stairs and steps shall:

(a) Be in good repair; and

(b) Include railing of comparable length to the stairs or steps.

(10) A registered child care provider's home shall have:

(a) At least one (1) working telephone with a residential line or an active mobile service; and

(b) An accessible list of emergency telephone numbers, including the numbers for the:

1. Police;

2. Fire station;

3. Emergency medical care;

4. Poison control center; and

5. Reporting of child abuse and neglect.

(11) The registered child care provider's home shall have a:

(a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and

(b) Freezer that maintains a temperature of zero degrees Fahrenheit.

(12) The registered child care provider shall maintain first aid supplies that include:

(a) Liquid soap;

(b) Band aids;

(c) Sterile gauze;[~~,~~] and

(d) Adhesive tape.

(13) The registered child care provider shall wash hands with liquid soap and running water:

(a) Before and after diapering a child;

(b) Before and after food preparation;

(c) Before feeding a child, and

(d) At other times when necessary to prevent the spread of disease.

(14) **In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.** [~~During operating hours, the use of corporal physical discipline shall be prohibited in accordance with KRS 199.896(18).~~]

(15) Pets or livestock shall be vaccinated and not left alone with a child.

(16) If transportation is provided by the provider, the registered child care provider shall:

(a) Have written permission from a parent or guardian to transport the child;

(b) Have a vehicle equipped with seat belts;

(c) **Ensure that each child over forty (40) inches in height is restrained in accordance with Kentucky law** [~~individually seat belt each child~~]; and

(d) **Comply with** [~~Transport pursuant to~~] KRS 189.125(3) **for each child forty (40) inches in height or less and comply with 189.125(6)** [~~and (6)~~].

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within forty-five (45) calendar days from receipt of the individual's notice **of intent to apply** made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (5) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:

(a) Sections 2(4), (5), and 5 of this administrative regulation; and

(b) Section 3 of this administrative regulation, if child care is given in the home of the provider.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (5) of this administrative regulation[~~,~~] as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:

(a) Sections 2(4) through (6), and 5 of this administrative regulation; and

(b) Section 3 of this administrative regulation if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement within the ninety (90) day timeframe pursuant to Section 2(6) of this administrative regulation, the cabinet or its designee shall not approve an applicant for payment pursuant to 922 KAR 2:160.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

(a) Live in the same residence as the child in care; [~~or~~]

(b) Hold a license [~~or certification~~] to provide child care in accordance with 922 KAR 2:090;

(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or

(d) Provide care for more than three (3) [~~unrelated~~] children

unrelated to the provider in accordance with KRS 199.8982(1)(a). [or 2:100.]

(2) A registered child care provider shall not provide other home based services, including such services as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145.

(3) A registered child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898 [during operating hours]; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, its designee, and parent access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within ten (10) calendar days for a:

(a) New household member who is eighteen (18) years or older; or

(b) Household member who turns age eighteen (18).

(5)(a) A registered child care provider shall maintain a monthly sign-in sheet in which the daily arrival and departure times of each child are recorded.

(b) A registered child care provider shall retain monthly sign-in sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

(1) Three (3) children receiving CCAP per day **or**[;

(2)] six (6) children receiving CCAP per day, if those children are a part of a sibling group; and

(2)[(3)] A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

(a) Meet the requirements specified in Sections 2(5) and 5 of this administrative regulation; and

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee, in one (1) or more of the following subjects:

1. Child growth and development;

2. Learning environments and nutrition;

3. Health, safety, and nutrition;

4. Family and community partnerships;

5. Child assessment;

6. Professional development and professionalism; or

7. Program management and evaluation.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) The cabinet or its designee shall send written notice of negative action to

(a) An applicant for registration, if the application is:

1. Withdrawn; or

2. Denied; or

(b) A registered child care provider, if the **provider's registration** [status] is:

1. Closed; or

2. Revoked.

(2) The notice of negative action shall include the:

(a) Reason for the negative action; and

(b) Effective date.

(3) **An application for registration shall be denied or a registered provider's registration shall be revoked if:** [An applicant for registration or a registered child care provider shall be denied or revoked from providing services if:]

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A background check **pursuant to** [required by] KRS 17.165(5) reveals a:

1. Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or

2. Conviction of a:

a. Violent crime; or

b. Sex crime;

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction related to the abuse or neglect of an adult;

2. A conviction for a drug-related felony; or

3. Other behavior or condition indicating inability to provide reliable care to a child;

(d) **The** [During operating hours, the] provider uses or allows the use of any form of corporal physical discipline on a child **entrusted to the provider's care**; or

(e) **The cabinet has probable cause to believe** there is an immediate threat to the health, safety, or welfare of a child [in accordance with KRS 199.8994(6)(b)].

(4) An applicant or registered child care provider **whose application** [who] has been denied or **whose registration has been** revoked by the cabinet or its designee as the result of a negative action stemming from the requirements specified in 922 KAR 2:090, 2:100, 2:110, 2:120, or this administrative regulation, shall not be eligible to apply, operate, or reapply for registration with CCAP for a penalty period of one (1) year from the date of denial or revocation. After completion of the one (1) year penalty period from the date of prior denial or revocation, an individual may be approved if the individual:

(a) Complies with:

1. Sections 2 and 5 of this administrative regulation; and

2. If care is given in the home of the provider, Section 3 of this administrative regulation;

(b) Completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(c) Has not had an application, certificate, license, or registration to operate as a child care provider denied or revoked as specified in KRS 17.165; and

(d) Completes any disqualification period imposed from a previous denial or revocation of providing child care services.

(5) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(6) A registered child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2).

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws **an application for registration, or revokes a provider's registration, or closes a provider.** [registration to an applicant, or revokes or closes a registered child care provider's status.] the applicant or provider may request an appeal in accordance with 922 KAR 1:320.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-94A Registered Child Care Provider Information Form", edition 11/07;

(b) "DCC-95, Application for Registered Child Care Provider in Provider's Home", edition 11/07;

(c) "DCC-96, Application for Registered for Child Care Provider in Child's Home", edition 11/07; and

(d) "IRS W-9, Request for Taxpayer Identification Number and Certification", edition 11/05

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [~~An applicant requesting registration as a child care provider shall:~~

~~(a) Not hold a license or certification to provide child care in accordance with 922 KAR 2:090 or 922 KAR 2:100; and~~

~~(b) Have at least one (1) working telephone with a residential line or active mobile service.~~

~~(2) To request registration as a child care provider, an applicant shall:~~

~~(a) Complete and submit to the cabinet or its designee, if requesting to care for a child in the:~~

~~1. Child's home, the "DCC-96, Registration for Child Care Provider in Child's Home"; or~~

~~2. Applicant's home, the:~~

~~a. "DCC-95, Registration for Child Care Provider in Provider's Home", and~~

~~b. "DCC-95A, Child Care Provider Self Assessment";~~

~~(b) Sign the "DCC-94, Child Care Service Agreement and Certificate", submitted by a parent to the cabinet or its designee, requesting the applicant provide services to a child for whom a benefit is paid under 922 KAR 2:160;~~

~~(c) Show proof that the applicant is eighteen (18) years old or older; and~~

~~(d) Meet the requirements of KRS 17.165(5), including:~~

~~1. A criminal records check conducted by the Kentucky State Police or Administrative Office of the Courts within the previous twelve (12) months for:~~

~~a. The applicant; and~~

~~b. Each member of the applicant's household who is age eighteen (18) or older; and~~

~~2. A child abuse and neglect check in accordance with 922 KAR 1:470 for:~~

~~a. The applicant; and~~

~~b. Each member of the applicant's household who is age eighteen (18) or older; and~~

~~3. Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee.~~

~~(3) Within thirty (30) days of the submission of documentation required in subsection (2) of this section, the applicant shall:~~

~~(a) Submit written verification that the applicant and each member of the applicant's household, who is age eighteen (18) or over, are free of active tuberculosis as specified in KRS 199.8982(1)(a)5; and~~

~~(b) Demonstrate the ability to care for a child by providing a written statement from a health professional attesting to the applicant's general health and medical ability to care for a child.~~

~~(4) Within ninety (90) days of the submission of documentation required in subsection (2) of this section, the applicant shall obtain three (3) hours of training approved by the cabinet or its designee, in the areas of:~~

~~(a) Infant and child first aid;~~

~~(b) Recognizing child abuse and neglect; and~~

~~(c) Health and safety standards.~~

~~Section 3. Approval of an Applicant as a Registered Child Care Provider.~~

~~(1) If requirements of Sections 2(1) through (3) and 4 of this administrative regulation are met, the cabinet or its designee may approve an applicant to provide child care services to a child for ninety (90) days.~~

~~(2) If all requirements specified in Sections 2 and 4 of this administrative regulation are met, the cabinet or its designee may approve an applicant as a registered child care provider for one (1) year.~~

~~Section 4. General Requirements for Registered Child Care Providers.~~

~~(1) A registered child care provider shall not provide other home based services, including such services as:~~

~~(a) A personal care home in accordance with 902 KAR 20:036;~~

~~(b) A family care home 902 KAR 20:041;~~

~~(c) An adult day care in accordance with 910 KAR 1:160; or~~

~~(d) Supports for community living in accordance with 907 KAR 1:145.~~

~~(2) A registered child care provider shall:~~

~~(a) Comply with the provisions of KRS 199.898;~~

~~(b) Allow the cabinet or its designee access to the premises where a child receives care during the hours that the child care services are provided; and~~

~~(c) Report within ten (10) days the following changes:~~

~~1. Address;~~

~~2. Name;~~

~~3. Telephone number;~~

~~4. Household members; or~~

~~5. Location where the child care is provided.~~

~~(3) A registered child care provider shall comply with the:~~

~~(a) Requirements of Section 2(2)(d) within ten (10) days for a:~~

~~1. New household member who is age eighteen (18) or older; or~~

~~2. Household member who turns age eighteen (18); and~~

~~(b) Child ratios established in Section 5 of this administrative regulation.~~

~~Section 5. Child Ratios. (1) With the exception of a sibling group, a child care provider shall not care for more than three (3) unrelated children.~~

~~(2) If a child care provider cares for related and unrelated children, the provider shall not care for more than:~~

~~(a) Three (3) children under the age of one (1) year, including the provider's related children; and~~

~~(b) Five (5) children under the age of six (6) years old including the provider's related children and no more than three (3) unrelated children.~~

~~(3) A child care provider may care for up to eight (8) children, including the provider's related children, and no more than three (3) unrelated children.~~

~~Section 6. Renewal of Registration. (1) A child care provider shall annually:~~

~~(1) Meet the requirements specified in Sections 2(1) through (3) and 4 of this administrative regulation; and~~

~~(2) Obtain three (3) hours of training in early care and education approved by the cabinet or its designee, in the following subjects:~~

~~(a) Child growth and development;~~

~~(b) Learning environments and nutrition;~~

~~(c) Health, safety, and nutrition;~~

~~(d) Family and community partnerships;~~

~~(e) Child assessment;~~

~~(f) Professional development and professionalism; or~~

~~(g) Program management and evaluation.~~

~~Section 7. Denial or Termination of Child Care Provider Registration. (1) The cabinet or its designee shall send written notice of denial or termination of registration to each applicant or registered provider. If registration is denied or terminated, the notice shall include the:~~

~~(a) Reason for the denial or termination; and~~

~~(b) Effective date of the denial or termination.~~

~~(2) An applicant for registration or a registered child care provider shall be denied or terminated from providing services if:~~

~~(a) The applicant during the:~~

~~1. Initial application process fails to comply with Sections 2 through 5 of this administrative regulation; or~~

~~2. Renewal application process fails to comply with Sections 2(1) through (3), and 4 through 6 of this administrative regulation;~~

~~(b) The provider fails to comply with Sections 4 and 5 of this ad-~~

~~ministrative regulation;~~

~~(c) A background check required by KRS 17.165(5) reveals a:~~

~~1. Cabinet substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or~~

~~2. Conviction of a~~

~~a. Violent crime; or~~

~~b. Sex crime,~~

~~(d) A history of behavior exists that may impact the safety or security of a child in care including:~~

~~1. A conviction related to the abuse or neglect of an adult,~~

~~2. A conviction for a drug-related felony; or~~

~~3. Other behavior or condition indicating inability to provide reliable care to a child;~~

~~(e) During operating hours, the provider uses or allows the use of any form of corporal physical discipline on a child in care including the provider's related child, or~~

~~(f) There is an immediate threat to the health, safety, or welfare of a child in accordance with KRS 199.8994(6)(b).~~

~~(3) The cabinet or its designee shall not approve an applicant for payment pursuant to 922 KAR 2:160 if the applicant has not completed the requirements set forth in Sections 2(1) through (3) and 4 of this administrative regulation.~~

~~(4) An applicant or child care provider that has been denied, revoked, or terminated by the cabinet or its designee as the result of a negative action of the requirements described in 922 KAR 2:090, 2:100, 2:110, 2:120, or this administrative regulation shall not be eligible to apply or reapply for registration with the Child Care Assistance Program for a period of one (1) year from the date of denial, revocation, or termination.~~

~~(5) After completion of a one (1) year period from the date of prior denial, revocation, or termination the applicant may be approved if the applicant:~~

~~(a) Complies with Sections 2(1) through (3) and 4 of this administrative regulation;~~

~~(b) Completes twelve (12) hours of training approved by the cabinet or its designee in early care and education;~~

~~(c) Has not had an application, certificate, license, or registration to operate as a child care provider denied, revoked, or terminated as specified in KRS 17.165; and~~

~~(d) Completes any disqualification periods imposed from a previous denial, revocation, or termination of providing child care services.~~

~~Section 8. Appeal of Denial, Revocation, or Termination. If the cabinet or its designee denies registration, revokes, or terminates an agreement to provide services with a child care provider pursuant to Section 7 of this administrative regulation, the provider may request an appeal in accordance with 922 KAR 1:320, Service appeals, Section 2(10).~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) DCC-94, "Child Care Agreement and Certificate", edition 09/06;~~

~~(b) DCC-95, "Registration for Child Care Provider in Provider's Home", edition 09/06;~~

~~(c) DCC-95A, "Child Care Provider Self-Assessment", edition 09/06; and~~

~~(d) DCC-96, "Registration for Child Care Provider in Child's Home", edition 09/06.~~

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

MARK A WASHINGTON, Commissioner
TOM EMBERTON JR , Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: September 13, 2007

FILED WITH LRC: September 14, 2007 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET
Motor Vehicle Commission
(Amended After Comments)

605 KAR 1:031. Automotive mobility dealer requirements and licensing.

RELATES TO: KRS 190.010(26), (27), (28), 190.031
STATUTORY AUTHORITY: 190 031, 190.073
NECESSITY, FUNCTION AND CONFORMITY: KRS 190 031 requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be an automotive mobility dealer and directs the commission to establish relevant requirements which must include provisions for automotive mobility dealers to meet reasonable and appropriate quality assurance standards. This administrative regulation sets forth those requirements and standards.

Section 1. Definitions. (1) "Adapted vehicle," in addition to the definition in KRS 190.010(27), means only those new or used motor vehicles which are specially designed or permanently modified for use by aging or disabled persons.

(2) "Equipment" as used in KRS 190.010(28) means only those mechanical or electronic devices, parts or accessories which are permanently attached to or incorporated in a motor vehicle and which are specifically designed to facilitate the use of a motor vehicle by an aging or disabled person.

(3) "Reasonable and appropriate quality assurance requirements" means compliance with all applicable statutes and regulations of the federal government and the Commonwealth of Kentucky regarding the design, construction, modification or repair of motor vehicles, including the provisions of 49 C.F.R. Part 595 and the Federal Motor Vehicle Safety Standards.

Section 2. (1) In addition to the application requirements contained in 605 KAR 1:030, an automotive mobility dealer applicant shall certify that its operations will meet reasonable and appropriate quality assurance requirements.

(2) Any automotive mobility dealer applicant that actually modifies vehicles to create adapted vehicles, installs mobility equipment or services or repairs adapted vehicles or mobility equipment, shall certify:

(a) That all mobility equipment and materials utilized in the modification, installation, servicing or repair comply with applicable federal and state guidelines; and

(b) That the relevant personnel of the automotive mobility dealer have been trained and certified (if applicable) by the equipment manufacturers or other competent authority with regard to the modification, installation, repair or servicing.

(3) Any automotive mobility dealer that intends to sell newly modified adapted vehicles, modified or altered by third parties, shall identify the vehicle modifier or installer who will provide the modification services and shall certify that the vehicle modifier or installer will comply with applicable federal and state guidelines.

(4) Any automotive mobility dealer that cannot provide the applicable certification under this section shall provide a statement under oath as to the unavailability of the certification and the reasons therefore.

Section 3. Automotive mobility dealers shall notify the commission within twenty-one (21) days of any change regarding the source of newly adapted vehicles sold by the dealership.

Section 4. Applicants for an automotive mobility dealer license shall demonstrate at least $100,000 in net assets. In the event an applicant cannot demonstrate $100,000 in net assets, the commission, in its discretion, may accept a surety bond in the amount of any difference.

Section 5. An applicant for an automotive mobility dealer license shall demonstrate that it holds a policy for $1,000,000 in liability insurance. An automobile mobility dealer shall immediately notify the commission in the event that its liability insurance is cancelled or not renewed.

Section 6. An automotive mobility dealer, other than an automotive mobility dealer that is also a new motor vehicle dealer, may not offer, claim or indicate that it is selling new motor vehicles nor may it purport to sell or transfer a new motor vehicle on a certificate of origin. An automotive mobility dealer that is also a licensed new motor vehicle dealer may offer and sell adapted vehicles as new motor vehicles if they are of the make authorized to be sold by the new vehicle dealer license and otherwise meet the definition of a new motor vehicle.

Section 7. **Except as provided by KRS Chapter 186A** [~~Unless authorized by any other applicable Kentucky statute~~], an automotive mobility dealer shall title all untitled vehicles [~~or assign all titled vehicles~~] into the dealership name prior to any sale to a customer.

Section 8. An automotive mobility dealer shall **not engage in the sale of an** [~~be precluded from selling any~~] adapted vehicle that does not have proof that it has been adapted or modified in compliance with federal law.

Section 9. An automotive mobility dealer that is not also licensed as either a new motor vehicle dealer or a used motor vehicle dealer shall not **engage in the sale of** [~~sell~~] any vehicles other than adapted vehicles.

RAY COTTRELL, Chairman
APPROVED BY AGENCY: October 12, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m.
CONTACT PERSON: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 407 Wapping Street, Frankfort, Kentucky 40622, phone (502) 564-3750, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Carlos R. Cassady, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements for the initial application and renewal of the license to be an automotive mobility dealer in Kentucky and sets forth the reasonable and appropriate quality assurance standards which must be met by the applicants.
(b) The necessity of this administrative regulation: KRS 190.031 requires the Motor Vehicle Commission to establish requirements for the initial application for and renewal of a license to be an automotive mobility dealer and directs the Commission to establish relevant requirements, which must include provisions for automobile mobility dealers to meet reasonable and appropriate quality assurance standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the standard to be met by applicants and licensed automotive mobility dealers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the eligibility requirements for applicants who wish to become and remain automotive mobility dealers in Kentucky.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation:
(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 effect of administra-

tion of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become automotive mobility dealers in Kentucky. The number of such entities is unknown.

(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: This regulation establishes eligibility requirements for licensing as an automotive mobility dealer and the entities identified in question (3) will have to submit the required application, including all information required by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as it will vary depending on the proposed scope and size of the operations of each applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as automotive mobility dealers in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(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: KRS 190.030 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No, tiering is not applied because all automotive mobility dealers affected by this regulation are treated the same.

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? Motor Vehicle Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.031, 190 073.

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? Regulation will generate between $100 and $200 per application, however the number of applications to be received is unknown.

(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? Regulation will generate between $100 and $200 per application, however the number of applications to be received is unknown.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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
(Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2007-2009 State Health Plan as amended October 15[~~July 13~~], 2007 [~~2006 Update to the 2004-2006 State Health Plan as amended January 31, 2006~~] shall be used to (1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The 2007-2009 State Health Plan as amended October 15[~~July 13~~], 2007 [~~2006 Update to the 2004-2006 State Health Plan as amended May 12, 2006~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth[~~third~~] floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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: Shane P. O'Donley, Division Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.

(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation and preparation of the

State Health Plan is required by KRS 216B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation and preparation of the State Health Plan is required by KRS 216B.

(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 update the 2007-2009 State Health Plan for 2007.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2005, so the next triennial plan is being prepared for 2007-2009.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) that the State Health Plan be updated on an annual basis.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care 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 modifications will only apply to potential Certificate of Need applicants for Special Care Neonatal Beds, Psychiatric Hospital Beds, Home Health Services, Hospice Services, and Megavoltage Radiation Therapy programs and Open Heart Surgery programs.

(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): None.

(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: None needed.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

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

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 any government owned or controlled healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

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
Office of Inspector General
Division of Health Care Facilities and Services
(Amended After Comments)

902 KAR 20:009. Facility specifications; hospitals.

RELATES TO: KRS 216B.010-216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires [~~and 216B.105 mandate~~] that the Kentucky Cabinet for Health and Family Services [~~Human Resources~~] regulate health facilities and health services. This administrative regulation provides licensure requirements for plan submission and the structural specifications and plant requirements for new construction, renovation, [~~and alteration~~] and maintenance of hospital facilities. [~~Hospital facilities licensed prior to the effective date of this administrative regulation shall meet the structural specifications in force on the date of their most recent licensure inspection.~~]

Section 1. Definitions. (1) [~~"Board" means the Commission for Health Economics Control in Kentucky.~~

~~(2)~~] "License" means an authorization issued by the Cabinet for Health and Family Services [~~board~~] for the purpose of operating a hospital facility.

(2)[~~(3)~~] "Licensure agency" means the [~~Division for Licensing and Regulation in the office~~] of [~~the~~] Inspector General, Cabinet for Health and Family Services [~~Human Resources~~].

(3) "Relocatable unit" means a structure that is not on wheels and which is built in such a manner that it may be relocated at any time.

(4) "Transportable unit" means any pre-manufactured structure, trailer, or self-propelled unit, equipped with a chassis or on wheels

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need, if required, and before beginning new construction or renovation, or making a change in function of a facility [~~from the board~~], the following procedures shall be followed:

(1) The licensee or applicant shall complete the planning and design requirements established in Chapter 1.5, **Sections 1.1 through 2.3.3.2** [~~Paragraphs 1.1-2.3.3.2~~], of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition, published by the **Facility Guidelines Institute and the** American Institute of Architects, **Academy of Architecture for Health.** [~~Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities for a hospital, the licensee or applicant shall submit plans to the licensure agency for approval.~~]

(2) The licensee or applicant shall submit a functional program for each project to the licensure agency. The functional program shall meet the requirements established in Chapter 1.2, **Sections 2.1 through 2.3.2** [~~Paragraphs 1.2-2.3.2~~], of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(3) [~~All~~] architectural, mechanical and electrical drawings shall bear the seal of an architect registered in the Commonwealth of Kentucky [~~or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both~~].

(4)[~~(3)~~] Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(5)[~~(4) All such~~] plans and specifications must be submitted to and approved by the licensure agency prior to commencement of new construction, renovation, or change in function of a facility [~~of new buildings or alterations of existing buildings~~].

(6)[~~(5)~~] Plans and specifications [~~in specific detail as required by the Kentucky Building Code shall be submitted, together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications~~] must be approved by the Office [~~Department~~] of Housing, Buildings and Construction. Appropriate local building permits shall be obtained prior to commencement of new construction or renovation..

(7) Radiation protection requirements of facilities where sources of radiation are used or stored shall be approved by the Radiation Health Branch, Division of Public Health Protection and Safety, Department for Public Health, Cabinet for Health and Family Services.

Section 3. Submission of Plans and Specifications for Hospitals. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts scaled (one-half (1/2) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, plans shall show the facilities and general arrangement [~~arrangements~~] of those buildings.

(2) Second stage, design development [~~preliminary~~] plans. Design development [~~Preliminary sketch~~] plans shall include the following:

(a) Architectural.

1. Plans of basement, floors and roof showing space assignment, sizes, and outline of fixed and movable equipment;

2. Elevations [~~All elevators~~] and typical sections;

3. Plot plan showing roads, parking, and sidewalks; and

4. Areas and bed capacities by floors.

(b) Mechanical.

1. Single line layout of [~~all~~] duct and piping systems;

2. Riser diagrams for multistory construction; and

3. Scale layout of boilers and major associated equipment and central heating, cooling, and ventilating units.

(c) Electrical.

1. Plans showing space assignment, size, and outline of [~~assignments, sizes and outlines of fixed equipment such as~~] transformers, main switch, [~~and~~] switchboards, [~~and~~] generator sets and other fixed equipment; and

2. Simple riser diagram for multistory building construction, showing arrangement of feeders, subfeeders, bus work, load centers, and branch circuit panels.

(d) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering; .

2. Description of the air-conditioning, heating, and ventilation systems and their controls; duct and piping systems; and dietary, laundry, sterilizing and other special equipment; and

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage, contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following disciplines [~~branches~~] of the work: architectural, structural, mechanical, and electrical. Drawings [~~They~~] shall include the following:

1. Architectural drawings.

a. Approach plan showing [~~all~~] new topography, newly established levels and grades, existing structures on the site [~~(if any)~~], new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor, and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Layout of typical and special rooms indicating [~~all~~] fixed equipment and major items of movable equipment. Equipment not included in the construction contract shall be so indicated; and

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following:

(i) Dumbwaiters: electric, hand, or hydraulic;

(ii) Elevators: freight, passenger, or patient;

(iii) Loading dock devices; and

(iv) Pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and [~~all~~] intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings; and

c. Details of [~~all~~] special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems:[~~.~~]

(i) Radiators and steam heated equipment such as sterilizers, warmers, and steam tables;

(ii) Heating and steam mains and branches with pipe sizes;

(iii) Diagram of heating and steam risers with pipe sizes;

(iv) Sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners;

(v) Pumps, tanks, boiler breeching, and piping and boiler room accessories;

(vi) Air-conditioning systems with required equipment, water and refrigerant piping, and ducts;

(vii) Supply and exhaust ventilation systems with heating/cooling connections and piping; and

(viii) Air quantities for [~~all~~] room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems; [~~-~~]

(i) Size and elevation of[~~:~~] street sewer, house sewer, house drains, street water main, and water service into the building;

(ii) Location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment,

(iii) Size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks;

(iv) Riser diagram for [~~all~~] plumbing stacks with vents, water risers, and fixture connections;

(v) Gas, oxygen, and vacuum systems;

(vi) Standpipe and sprinkler systems where required; and

(vii) [~~all~~] Fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the

public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits; and

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe type, size capacity [~~types, sizes, capacities,~~] workmanship, finish [~~finishes~~] and other characteristics of [~~all~~] materials and equipment. Specifications [~~and~~] shall include:

1. Cover or title sheet;

2. Index; and

3. Detailed description of [~~Sections describing~~] materials and workmanship [~~in detail~~] for each class of work.

(c) Access to work. Representatives of the appropriate state agencies shall have access at [~~all~~] reasonable times to the work [~~wherever it is in preparation or progress,~~] and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Administrative Regulations. (1) This section may be administered independently from other sections of this administrative regulation.

(2) General. Nothing stated herein shall relieve the license or applicant [~~sponsor~~] from compliance with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply if [~~where~~] applicable and as adopted by the respective agency authority:

(a) [~~Requirements for~~] Safety pursuant to 815 KAR 10:060[~~920, as amended~~];

(b) [~~Requirements for~~] Plumbing pursuant to 815 KAR 20.010-191[~~, as amended~~];

(c) [~~Requirements for~~] Air contaminants for incinerators pursuant to 401 KAR 59.020 and 401 KAR 61:010;

(d) [~~Requirements for~~] Elevators pursuant to 815 KAR 4.010; and

(e) [~~Requirements for~~] Making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

[~~(4) Prior to occupancy the facility shall have final approval from appropriate agencies.~~

~~(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code before relicensure is granted by the licensing agency.~~]

Section 5. Existing Facility Requirements. Licensure requirements for the structural specifications, plant requirements, and maintenance of a licensed hospital's physical structure which existed before the effective date of this regulation and hospital construction and renovation plans approved by the licensure agency before the effective date of this regulation shall meet the requirements in Sections 6 through 33 of this administrative regulation. [~~Facility Requirements and Special Conditions. (1) A copy of the narrative program as submitted in the Certificate of Need application for each project shall be provided by the sponsor and shall describe the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.~~

~~(2) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.~~

~~(3) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.~~]

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity shall be four (4) patients.

(b) Minimum room area [~~areas~~] exclusive of toilet rooms, closets, lockers, wardrobes, or vestibules shall be 100 square feet in a one (1) bed room [~~rooms~~] and eighty (80) square feet per bed in a multibed room [~~rooms~~].

(c) A multibed room [~~Multibed rooms~~] shall be designed to permit no more than two (2) beds side by side parallel to the window wall with not less than a four (4) foot space provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between the foot of a bed and the opposite wall, or foot of the opposite bed in a multibed room [~~multibed rooms~~].

(d) Window. A patient room shall [~~All patient rooms must~~] have windows operable without the use of tools and shall have sills not more than three (3) feet above the floor. The window [~~Window~~] area shall be at least eight (8) percent of the patient room floor area.

(e) Nurses' calling system. See Section 32(7) of this administrative regulation.

(f) Lavatory. In a single or a [~~and~~] two (2) bed room [~~rooms~~] with private toilet room, the lavatory may be located in the toilet room. If [~~Where~~] two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room.

(g) Wardrobe or closet for each patient. Minimum clear dimensions shall be eight (8) inches deep by one (1) foot and eight (8) inches wide with full length hanging space, clothes rod and shelf.

(h) Cubicle curtains[~~,~~] or equivalent built-in devices shall be provided to furnish complete privacy for each patient [~~at any one time~~] in multibed rooms.

(i) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room if [~~where~~] the access is through another patient's room. At least sixty (60) percent of the beds in a nursing unit shall be located in rooms designed for one (1) or two (2) beds.

(2) Service areas in each nursing unit. The size of each service area shall [~~will~~] depend on the number and types of beds within the unit and shall include:

(a) Nurses' station for charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(b) Clean workroom or clean holding area. The clean workroom shall contain a work counter, hand-washing lavatory or sink and storage facilities. The clean holding room shall be part of a system for storage and distribution of clean and sterile supplies and shall be similar to the clean workroom except that the work counter and hand-washing facilities may be omitted.

(c) Soiled workroom or soiled holding room.

1. A [~~The~~] soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle, and linen receptacle.

2. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(d) Lounge and toilet rooms [~~room(s)~~] for staff including lockers for storage of personal effects, [~~readily accessible. (~~] These rooms may [~~May~~] serve more than one (1) nursing unit.[~~)~~]

(e) Multipurpose room for conferences, demonstrations and consultation. This room may [~~(May~~] serve more than one (1) nursing unit [~~)~~]

(f) Examination [~~Room for examination~~] and treatment room. The examination and treatment room [~~of patients. It~~] shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet. This room may [~~(May~~] serve more than one (1) nursing unit.[~~)~~] The examination and treatment room [~~Room~~] may be eliminated if all patient rooms are single-bed rooms. The room shall contain a lavatory or sink equipped for hand washing, work counter, storage facilities, and examination table The emergency treatment room may be used for this purpose, if it is conveniently located on the same floor as the patient rooms.

(g) Medicine area. Provision shall be made for convenient and

prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and shall contain a work counter, refrigerator, and locked storage for biologicals and drugs.

2. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff.

3. A controlled [~~Controlled~~] substances locker must be under double lock.

4. A hand-washing facility shall be provided in the medicine area.

(h) Clean linen storage. An enclosed [~~Enclosed~~] storage space or a [~~(may be~~] designated area within the clean workroom shall be provided for storage of clean linen. [~~)~~] If a closed cart system is used, storage may be in an alcove.

(i) Nourishment station. The nounshment state [~~This~~] shall contain a sink equipped for hand washing, equipment[~~. Equipment~~] for serving between scheduled meals, refrigerator, storage cabinets, and a self-dispensing ice maker. A nounshment station may[~~dispenser units to provide patient service and treatment. (May~~] serve more than one (1) nursing unit on the same floor.[~~)~~]

(j) Patients' bathing facilities. Bathing facilities shall include at [~~At~~] least one (1) shower stall or one (1) bathtub for each twelve (12) patients not individually served. At least one (1) bathing facility on each patient floor shall have space for a wheelchair patient and [~~with~~] an assisting attendant. At least one (1) sitz bath shall be provided in post partum units.

(k) Stretcher and wheelchair parking area or alcove. The stretcher and wheelchair parking area or alcove may [~~(May~~] serve more than one (1) nursing unit on the same floor [~~)~~]

(l) Janitor's closet. A janitor's closet shall be provided for storage of housekeeping supplies and equipment. The closet shall have [~~with~~] a floor receptor or service sink. The closet may [~~(May~~] serve more than one (1) nursing unit on the same floor.[~~)~~]

(m) Equipment storage room. The equipment storage room shall have [~~with~~] sufficient space for equipment. The equipment storage room may [~~such as I.V. stands, inhalators, air mattresses, and walkers. (May~~] serve more than one (1) nursing unit on the same floor.[~~)~~]

(n) Emergency equipment storage. Space for emergency equipment [~~such as crash carts~~] shall be located in close proximity to the nurses' station and out of traffic. The emergency equipment storage space may [~~provided and be under direct control of the nursing staff in close proximity to the nurses' station and out of traffic. (May~~] serve more than one (1) nursing unit on the same floor.[~~)~~]

(3) Patient toilet rooms. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms, but not more than four (4) beds. [~~(~~]The lavatory may be omitted from the toilet room if a lavatory [~~one (1)~~] is provided in each patient room.[~~)~~]

(4) Isolation room. An isolation room shall be provided which shall have: [~~Isolation room(s) for the particular use of those prone to infections as well as those suffering from infections shall be provided. Each isolation room shall have~~]

(a) One [~~Only one~~] (1) patient per room;

(b) Separate toilet room, with direct entry from the patient bed area, with bath or shower and lavatory [~~for the exclusive use of the patient allowing for direct entry from the patient bed area~~]; and

(c) Facilities outside and immediately adjacent to the patient room for maintaining aseptic conditions.

Section 7. Intensive Care Unit. Hospitals which have intensive care units shall meet the following requirements:

(1) Patient rooms. A Cardiac intensive care patient [~~patients~~] shall be placed in a single-bed room [~~rooms~~]. A medical or [~~Medical and~~] surgical intensive care patient [~~patients~~] may be housed in a single-bed room or in a multibed room. [~~rooms. In the latter case,~~] At least one (1) single-bed room shall be provided in each medical or surgical care unit. [~~All~~] Beds shall be arranged to permit direct visual observation by nursing staff. Each patient room shall meet the following requirements:

(a) Clearance between beds in a multibed room [~~rooms~~] shall not be less than seven (7) feet with a minimum of three (3) feet to the side of beds and at least four (4) feet from the foot of the beds. A single-bed room or cubicle [~~rooms or cubicles~~] shall have a minimum clear area of 120 square feet with a minimum dimension of ten (10) feet.

(b) View panels shall be provided in the doors and walls for nursing staff observation of patients. A means shall be provided to obstruct the view panels when the patient requires visual privacy. Glazing for view panels shall be safety glass, wire glass or clear plastic unless [~~to reduce the hazard from accidental breakage, except where~~] wire glass is required for fire safety purposes.

(c) An I.V. solution support shall be provided for each patient and shall be positioned to prevent the suspension of [~~so that~~] the solution [~~is not suspended~~] directly over the patient.

(d) A lavatory equipped for hand washing shall be provided in each private patient room. In multibed rooms there shall be at least one (1) lavatory for each six (6) beds.

(e) Nurses' calling system. See Section 32(7) of this administrative regulation.

(f) Each cardiac intensive care patient shall be provided a toilet facility which is directly accessible from the bed area.

1. A [~~The~~] water closet shall have sufficient clearance around it to facilitate its use by a patient [~~patients~~] needing assistance.

2. A portable water closet is [~~closets are~~] permitted within the patient room. If a portable unit is [~~units are~~] used, facilities for servicing and storing the unit [~~them~~] shall be conveniently located to the cardiac care unit.

(g) Each room shall have a window or each bed shall have visual access to a window. [~~In the latter case, by use of vision panels in partitions,~~] one (1) window may serve more than one (1) patient by use of vision panels in partitions. The window sill height shall not exceed three (3) feet above the floor.

(2) Service areas. The size and location of each service area shall [~~will~~] depend upon the number of beds to be served. One (1) service area may serve two (2) or more intensive care units. The following service areas shall be located in or be readily available to each intensive care unit:

(a) Nurses' station. The nurses' station [~~It~~] shall be located to permit direct visual observation of each patient served.

(b) Hand-washing facilities. Hand-washing facilities [~~These~~] shall be located convenient to the nurses' station and medicine area.

(c) Charting facilities. Charting facilities [~~These~~] shall be separated from the monitoring service.

(d) Staff's toilet room. The toilet [~~This~~] room shall contain a water closet and lavatory equipped for hand washing.

(e) Closets. Individual closets or compartments for the safekeeping of coats and personal effects belonging to the nursing staff[~~. They~~] shall be located at or near the nurses' station.

(f) Clean workroom or a system for storage and distribution of clean and sterile supplies. The clean workroom shall contain a work counter, hand-washing facility, and storage facilities.

(g) Soiled workroom or soiled holding room.

1. A [~~The~~] soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle and soiled linen receptacles.

2. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(h) Facilities for washing or flushing bedpans. Facilities for washing or flushing bedpans [~~These~~] shall be provided within the unit.

(i) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. A [~~If used, a~~] medicine preparation room or unit shall be under the nursing staff's visual control and shall[~~,~~] contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine preparation room [~~It~~] shall contain a minimum floor area

of fifty (50) square feet.

2. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff.

3. Controlled substances shall [must] be under double lock and a hand-washing facility shall be provided.

(j) Clean linen storage. A separate closet or designated area within the clean workroom shall be provided for clean linen storage. If a closed cart system is used, storage may be in an alcove.

(k) Nourishment station. The nourishment station [This] shall contain a sink equipped for hand washing, equipment for serving between scheduled meals, refrigerator, storage cabinets and a self-dispensing ice maker[-dispenser units] to provide ice for patient [patients'] service and treatment.

(l) Emergency equipment storage. Space shall be provided for a crash cart and other necessary [similar] emergency equipment.

(m) Equipment storage room. Space shall be provided for necessary equipment, [such as inhalators shall be provided.]

(n) Patient [Patients'] storage facilities. Individual lockers shall be provided for the storage of a patient's [patients'] clothing and personal effects. The [These] lockers may be located outside the intensive care unit. Lockers shall be of a size to permit hanging of full length garments.

(o) Waiting room. A separate waiting room shall be provided for [family members and others who may be permitted to visit] the intensive care unit [patients]. A toilet room, public telephone, and seating accommodations for long waiting periods shall be provided.

Section 8. Obstetrical Suite. (1) General. If an obstetrical suite is included in the functional [narrative] program, it shall be located and arranged to preclude unrelated traffic through the suite. The number of delivery rooms, labor rooms, recovery beds, and the size [sizes] of the service areas shall depend upon the estimated obstetrical workload.

(2) Delivery room [room(s)]. Each room shall have a minimum clear floor area of 300 square feet exclusive of fixed and movable cabinets and shelves. The room shall have [with] a minimum dimension of sixteen (16) feet.

(3) Labor room. Each room [room(s). These rooms] shall be a single-bed or two (2) bed room [rooms] with a minimum clear area of 100 square feet per bed.

(a) Labor beds shall be provided at the rate of two (2) for each delivery room.

(b) Each labor room shall contain a lavatory equipped for hand washing and have direct access to a toilet room. One (1) toilet room may serve two (2) labor rooms.

(c) The labor room [Labor rooms] shall be arranged so that the door is [doors are] visible from a nurses' work station and shall be directly accessible to facilities for medication, hand washing, charting and storage for supplies and equipment.

(d) At least one (1) shower shall be provided for use by labor room patients [shall be provided].

(e) Controls shall be located outside of the wet area for use by nursing staff.

(4) Recovery room. The recovery room [It] shall contain not less than two (2) beds, charting facilities located to permit staff surveillance of all beds, facilities for medicine dispensing, hand washing facilities, clinical sink with bedpan flushing device, and storage for equipment and supplies. The recovery room may be omitted in hospitals with an annual birth rate of less than 1,500.

(5) Service areas. The service areas in each obstetrical suite[. The services] shall include:

(a) Control station located to permit visual surveillance of all traffic which enters the obstetrical suite.

(b) Supervisor's office or station.

(c) Sterilizing equipment [facilities with high-speed autoclave(s)] conveniently located to serve [all] delivery rooms.

(d) Drug distribution station for storage and preparation of medication for patients. The drug distribution station [It] shall contain a work counter, storage facilities, and a sink equipped for hand washing. Controlled substances shall be under double lock.

(e) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each delivery room. [However,] Two (2) scrub stations may serve two (2) delivery rooms if the scrub stations are located adjacent to the entrance to each delivery room.

(f) Soiled workroom for the exclusive use of the obstetrical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials.

1. A [The] soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

2. A soiled holding room shall be similar to the soiled workroom except that the clinical sink may be omitted.

(g) Clean workroom or [a] clean supply room.

1. A clean workroom is required if [when] clean materials are assembled within the obstetrical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and space for clean and sterile supplies.

2. A clean supply room shall be provided if [when] the facility utilizes a central system for the cleanup, distribution of clean and sterile supplies, and central storage.

(h) Anesthesia workroom. A workroom for cleaning, testing and storage of anesthesia equipment[. It] shall contain a work counter and sink.

(i) Anesthesia storage facilities.

(j) Medical gas supply with storage space for reserve medical gas cylinders shall be provided.

(k) Equipment storage room [room(s)] for equipment used in the obstetrical suite.

(l) Staff clothing change areas.

1. Appropriate areas shall be provided for male and female personnel [(technicians, nurses, aides, and doctors)] working within the obstetrical suite.

2. Each area [The areas] shall contain lockers, showers, toilets, lavatories equipped for hand washing and space for putting on scrub suits and boots.

3. Each area [These areas] shall be arranged to provide a one (1) way traffic pattern, so that personnel entering from outside the obstetrical suite can shower, change and go directly into the obstetrical suite.

4. Space for removal of scrub suits and boots in the change area shall be designed so that personnel using it will avoid physical contact with clean personnel.

(m) Lounge and toilet facilities for obstetrical staff. A nurses' toilet room shall be provided near the labor rooms and recovery rooms [room(s)]

(n) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the obstetrical suite.

(o) Stretcher storage area. This area shall be out of the direct line of traffic

Section 9. Newborn Nursery Unit. (1) General Each nursery shall provide:

(a) One (1) Lavatory for hand washing [at the rate of one (1)] for each eight (8) infants;

(b) Emergency nurses' call system;

(c) Oxygen;

(d) Isolation nursery; and

(e) Glazed observation windows to permit viewing of infants from public areas, from workrooms, and between adjacent nurseries.

(2) [Full-term] Nursery. Each room shall contain not more than eight (8) bassinets, or up [(this may be increased] to sixteen (16) bassinets if the extra bassinets are of the isolation type. The room shall have[) with] a minimum area of twenty-four (24) square feet per regular bassinet and forty (40) square feet per isolation type bassinet [bassinets]. No nursery shall open directly into another nursery.

(3) Workroom. Each nursery shall be served by a connecting workroom. It shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, refrigerator, lavatory or sinks equipped for hand washing, and storage. One (1) workroom may serve a number of full-term nurseries if [provided that] required services are convenient to each.

(4) Examination and treatment room. The examination and treatment room [It] shall contain a work counter, storage, and lavatory equipped for hand washing.

(5) Continuing care [~~Premature and special care~~] nursery. If a continuing care nursery is provided, [~~A premature nursery is required only for hospitals with twenty-five (25) or more maternity beds.~~] each nursery shall have a minimum area of forty (40) square feet per bassinet. The continuing care [~~premature~~] nursery shall have its own workroom including lavatory. [{]A work area within the continuing care [~~premature~~] nursery may be used for the workroom, but this area shall be in addition to the required bassinet area.[}]

(6) Formula room. This room shall be used solely for [~~is intended for the sole purpose of~~] preparing the infant formula and shall have no direct access to the nursery or workroom. The formula room [~~It~~] may be located elsewhere in the hospital. The following shall be provided unless commercially [-]prepared formula is used:

(a) Work counter with built-in sink with gooseneck-type spout and knee or foot control;

(b) Lavatory;

(c) Hot plate;

(d) Refrigerator;

(e) Sterilizer [~~(autoclave)~~]; and

(f) Bottle washer.

(7) If commercially prepared formula is to be used or other modifications are proposed in formula preparation and processing, the formula room shall include such space and equipment as [~~are~~] necessary to accommodate formula processing, handling, and storage requirements.

(8) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the newborn nursery unit [~~This closet for exclusive use in the nursery shall contain floor receptor or service sink and space for supplies and cleaning equipment.~~]

Section 10 Pediatric Unit. If provided as a separate unit, the pediatric unit [~~It~~] shall include:

(1) Patient rooms. Each pediatric patient room [~~rooms~~] shall conform to the same requirements as Section 6(1)(b) and (c) of this administrative regulation except that a patient room [~~rooms~~] used for cribs shall contain at least sixty (60) square feet of clear area for each crib and shall have [~~with~~] no more than six (6) cribs in a room.

(2) Nursery. Each nursery serving pediatric patients shall contain no more than eight (8) bassinets. The minimum clear floor area per bassinet shall be forty (40) square feet. Each room shall contain a lavatory equipped for hand washing, nurses' emergency calling system and glazed view windows for observation of infants from public areas and the workroom.

(3) Nursery workroom [~~workrooms~~]. Each nursery shall be served by a connecting workroom. The workroom [~~It~~] shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, storage facilities, and a lavatory or sink equipped for hand washing. One (1) workroom may serve more than one (1) nursery.

(4) The examination and treatment room for a nursery [~~nursery(ies)~~] may be located in a separate room or a designated part of the workroom. The examination and treatment room [~~It~~] shall contain a work counter, storage facilities, and a lavatory equipped for hand washing.

(5) Service areas. The service areas shall conform to the requirements in Section 6(2) of this administrative regulation and shall meet the following additional conditions:

(a) Multipurpose or individual room [~~room(s)~~] shall be provided for dining, educational, and play purposes A total floor area of twenty (20) square feet per pediatric patient based on fifty (50) percent of the total number of pediatric patients shall be provided. Special provisions shall be made to minimize [~~the~~] impact noise transmission through the floor of the multipurpose room [~~room(s)~~] to occupied space [~~spaces~~] below.

(b) Space for preparation and storage of infant formula shall be provided in the unit or in a convenient location nearby.

(c) Toilet room. A toilet room shall be provided for each sex, with a minimum ratio of one (1) toilet for each eight (8) beds excluding bassinets.

(d) Storage closets or cabinets for toys and for educational and recreational equipment shall be provided.

(e) Storage space shall be provided for replacement of cribs and adult beds to provide flexibility for interchange of patient accommodations.

Section 11. Psychiatric Unit. If included as a separate unit, the psychiatric unit [~~It~~] shall be designed as other nursing units except that care shall [~~must~~] be taken to provide for patients needing close supervision to prevent the patient's escape, suicide, or hiding. The unit shall contain:

(1) Patient room. Each patient room shall meet the following requirements:

(a) Minimum floor area of 100 square feet in a one (1) bed room [~~rooms~~] and eighty (80) square feet per patient in a multibed room [~~rooms~~].

(b) Maximum of two (2) patients per room.

(c) Patient toilet room [~~rooms~~] A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms.

(d) Lavatory. A lavatory shall be provided in each patient room. If the patient room is served by its own private toilet room, the lavatory may be located in the toilet room.

(e) Window.

1. Sill height shall not be higher than three (3) feet above the floor.

2. Windows in a psychiatric unit [~~units~~] shall be of security type or a type that can only be opened by keys or tools that are under the control of staff. The degree of security required shall be as determined by program, but operation of sash shall be restricted to inhibit possible tendency for escape or suicide

3. Safety [~~Where glass fragments may create a hazard, safety~~] glazing or [~~and/or~~] other appropriate security features shall be incorporated if glass fragments may create a hazard

(f) A nurses' calling system is not required. If a call system is included, provisions shall be made to permit removal of call buttons or [~~and/or~~] use of blank plates as appropriate

(g) The visual privacy provided each patient shall isolate patients from one another but not from observation by staff.

(h) Bedpan flushing devices may be omitted from patient room toilets.

(2) Service areas. Service [~~These~~] areas shall conform to the requirements in Section 6(2) of this administrative regulation and shall meet the following additional conditions:

(a) Provide separate space for occupational therapy at the rate of fifteen (15) square feet per patient and a minimum area of 400 square feet.

(b) A minimum of two (2) separate social spaces, one (1) appropriate for noisy activities and the other for quiet activities, shall be provided. The combined area shall be a minimum of [~~not be less than~~] thirty (30) square feet per patient with a minimum of [~~not less than~~] 120 square feet for each of the two (2) spaces, whichever is greater. This space may be shared by dining activities.

(c) Storage for recreational and occupational therapy equipment.

(d) Storage for patients' belongings.

(e) Bathing facilities. Bathtubs or showers shall be provided at the rate of one (1) for each four (4) beds which are not individually served. At least one (1) bathing facility shall have space for a wheelchair patient and [~~with~~] an assisting attendant.

(3) Seclusion room [~~room(s)~~]. A seclusion room shall be provided for a patient [~~patients~~] requiring security and protection from [~~either~~] himself or others.

(a) The room shall be located in a manner affording direct supervision of the patient by the nursing staff.

(b) The room [~~It~~] shall be a single room and shall be constructed to minimize the possibility of a patient's hiding, escape, injury, or suicide.

(c) There shall be a minimum of one (1) seclusion room for every twenty-four (24) beds.

(d) [~~The seclusion room(s) is intended for short-term occupancies by patients who may have become violent or suicidal; therefore, special fixtures, hardware, etc., including~~] Ground fault interrupters for electrical circuits and tamper-proof screws shall be

used.

(e) Doors shall swing outward and shall have provisions for staff observation while maintaining privacy from the public and other patients.

Section 12. Surgical Suite. (1) General. If a surgical suite is included in the functional [narrative] program, the surgical suite [it] shall be located and arranged to preclude unrelated traffic through the suite. The number of operating rooms and recovery beds, including the size of the service areas, shall be based on the expected surgical workload.

(2) Operating room [room(s)]. Each operating room shall have a minimum clear floor area of 360 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of eighteen (18) feet. Storage space for splints and traction equipment shall be provided for rooms equipped for orthopedic surgery. At least two (2) x-ray film illuminators **or a monitor for displaying at least two (2) films or images simultaneously shall be provided** in each operating room. [shall be provided]

(3) Room [Rooms] for surgical cystoscopy and other endoscopic procedures. The procedure [These] room shall have a minimum clear area of 250 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of fifteen (15) feet. Facilities shall be provided for the disposal of liquid wastes [shall be provided].

(4) Recovery room. A room shall be provided [room(s). Room(s)] for post anesthesia recovery of surgical patients [shall be provided] and shall contain a drug distribution station, hand-washing facilities, charting facilities, clinical sink, and storage space for supplies and equipment. The design shall provide for a minimum [of] three (3) foot clearance to each side of the recovery bed [beds].

(5) Medical preparation and holding area. A room [Room(s)] shall be provided for medical preparation of patients and holding prior to surgery. The room [it] shall contain a drug distribution station, hand-washing facilities, and charting facilities. The design shall provide for a minimum [of] three (3) foot clearance to each side of the bed [beds]. This area may be eliminated if the medical preparation of a patient [patients] prior to surgery is done in the patient room [bedrooms].

(6) Service areas in each surgical suite. The services shall include:

(a) Control station located to permit visual surveillance of [all] traffic which enters the surgical suite;

(b) Sterilizing facilities with high speed autoclaves [autoclave(s)] located near [nearby] the operating room [rooms];

(c) Drug distribution station for storage and preparation of medication for patients. The station [it] shall contain a work counter, storage facilities, and a sink equipped for hand washing. Controlled substances shall be under double lock;

(d) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each operating room. [However,] two (2) scrub stations may serve two (2) operating rooms if the scrub stations are located adjacent to the entrance to each operating room;

(e) Soiled workroom for the exclusive use of the surgical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials.

1. A [The] soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

2. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted;

(f) Clean workroom or a clean supply room. A clean workroom is required if [when] clean materials are assembled within the surgical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies. A clean supply room shall be provided if [when] the facility utilizes a central system for the cleanup, distribution of clean and sterile supplies, and central storage;

(g) Anesthesia workroom. The workroom for cleaning, testing, and storage of anesthesia equipment[.—It] shall contain a work counter and sink;

(h) Anesthesia storage facilities;

(i) Medical gas supply with storage space for reserve medical gas cylinders shall be provided;

(j) Storage room [room(s)] for equipment and supplies used in the surgical suite;

(k) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel [(orderlies, technicians, nurses and doctors)] working within the surgical suite.

1. The change areas shall contain lockers, showers, toilets, lavatories equipped for hand washing and space for putting on scrub suits and boots.

2. The change [These] areas shall be arranged to provide a one (1) way traffic pattern so that personnel entering from outside the surgical suite can shower, change, and go directly into the surgical suite.

3. Space for removal of scrub suits and boots in the change area shall be designed so that personnel using it will avoid physical contact with clean personnel;

(l) Outpatient surgery change area. If the functional program includes outpatient surgery, a separate area shall be provided for an outpatient to change from street clothing into a hospital gown. The change area [areas. If the narrative program includes an outpatient surgery load, a separate area shall be provided where outpatients can change from street clothing into hospital gowns and are prepared for surgery. This] shall include a waiting room, lockers, toilets, and clothing change or gowning area with a traffic pattern similar to that of the staff clothing change area;

(m) Outpatient recovery. If the functional program [narrative] includes outpatient surgical services, provisions shall be made for a separate postrecovery area for outpatients;

(n) Patient's holding area. In facilities with two (2) or more operating rooms, a room or alcove shall be provided to accommodate stretcher patients waiting for surgery. The holding [This] area shall be under the visual control of the surgical suite control station. If a separate room for medical preparation of patients is provided as called for under Section 12(5) [11(5)] of this administrative regulation, this holding area will not be required;

(o) Stretcher storage areas. This area shall be out of direct line of traffic;

(p) Lounge and toilet facilities for surgical staff. These facilities shall be located to permit use without leaving the surgical suite. A nurses' toilet room shall be provided near the recovery rooms [room(s)]; and

(q) A janitor's closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for exclusive use in the surgical suite.

Section 13. Outpatient and Emergency Suite. (1) General. Facilities for emergency and outpatient clinic care shall be provided if included in the functional program [narrative plan].

(2) Emergency patient care services. The extent of the emergency services to be provided in the hospital shall [will] depend upon the community needs and the availability of other organized programs for emergency care within the community. The facilities shall be located to prevent outpatients from traversing inpatient areas and shall include:

(a) Entrance at grade level which is sheltered from the weather and has convenient access for ambulances and wheelchairs.

(b) Reception and control area located near the entrance, waiting area. [area(s)] and treatment room [room(s)].

(c) Public waiting area with toilet facilities, public telephone, and drinking fountain.

(d) Examination and treatment room [room(s)]. Hand-washing facilities shall be provided in each room. Each room shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet.

(e) Emergency room for minor surgical procedures. The minor surgical procedures room [it] shall contain a hand-washing facility and shall have a minimum floor area of 240 square feet. The minimum dimension shall be fifteen (15) feet.

(f) Clean workroom. The clean workroom [it] shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(g) Soiled workroom. The soiled workroom [it] shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

(h) Drug distribution station for storage and preparation of medication. The drug distribution station [It] shall contain a work counter, storage facilities, and sink equipped for hand washing. Controlled substances shall be under double lock.

(i) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.

(j) Staff toilet room.

(k) Patient's toilet room[~~. It shall be~~] located convenient to the treatment room [~~room(s)~~].

(l) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(m) Janitor's closet. The janitor's closet [It] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the emergency department.

(n) Equipment storage room.

(3) Outpatient department. If outpatient services are provided, the extent of the administrative, clinical, and diagnostic facilities [~~to be~~] provided shall [~~will~~] depend on the estimated patient load as described in the functional program. [~~narrative. The planning of~~] Outpatient facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment. Facilities shall be located so that outpatients do not traverse inpatient areas and the following shall be provided:

(a) Entrance at grade level which is sheltered from weather and able to accommodate wheelchair access.

(b) Reception and control area located near the entrance and waiting area [~~area(s)~~].

(c) Wheelchair storage out of the line of direct traffic.

(d) Public waiting area with toilet facilities, public telephone, and drinking fountain.

(e) Interview space [~~space(s)~~] for private interviews relating to social service, credit and admissions.

(f) General or individual office [~~office(s)~~] for business transaction, records, administrative, and professional staff [~~staffs~~].

(g) Multipurpose room [~~room(s)~~] for conferences, meetings, and health education purposes. The multipurpose room [It] shall be equipped for the use of visual aids.

(h) General purpose examination room [~~room(s)~~] for medical, obstetrical, and similar examinations. Each room shall have a minimum floor area of eighty (80) square feet, excluding such spaces as vestibule, toilet, closet, and work counter. An examination table shall be placed to provide at least thirty (30) inches clearance to each side and at the foot of the table. A lavatory or sink equipped for hand washing shall be provided in each room.

(i) Special purpose examination rooms. Room sizes for special clinics [~~such as eye, dental, ear, nose and throat examinations~~] shall be determined by the types of equipment used but shall be not less than eighty (80) square feet. A lavatory or sink equipped for hand washing shall be provided in each room.

(j) Observation room [~~room(s)~~] for handling of isolation, suspect, or disturbed patients. The observation room [It] shall be located convenient to the nurses' station to permit close observation of patients. In facilities having [~~an annual patient load of~~] 15,000 or less annual outpatients, a separate room shall [~~will~~] not be required if an examination room is modified to accommodate this function.

(k) Patient toilet facilities shall be provided. [~~The number required will depend on the actual patient load of the department.~~]

(l) Nurses' station for nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(m) Staff toilet room located convenient to the nurses' station.

(n) Clean workroom. The clean workroom [It] shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(o) Soiled workroom. The soiled workroom [It] shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

(p) Drug distribution station for storage and preparation of medication. The drug distribution station [It] shall contain a work counter, sink equipped for hand washing, and storage facilities. Controlled substances shall be under double lock.

(q) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(r) Janitor's closet. The janitor's closet [It] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the outpatient department.

(s) Equipment storage room.

Section 14. Radiology Suite. The radiology [~~This~~] suite shall contain the following:

(1) Radiographic room [~~room(s)~~];

(2) Film processing facilities;

(3) Viewing and administrative area [~~area(s)~~];

(4) Film storage facilities;

(5) Toilet room with hand-washing facility. The toilet room [It] shall be [~~located directly~~] accessible from each fluoroscopy room without entering the general corridor area;

(6) Dressing area [~~area(s)~~] for ambulatory patients with convenient access to toilets;

(7) Waiting room or alcove for ambulatory patients;

(8) Holding area for stretcher patients. The holding area for stretcher patients [It] shall be located out of the direct line of normal traffic; and

(9) Hand-washing facilities shall be provided in each radiographic room unless the room is used only for routine diagnostic screening. [~~such as for chest x-rays.~~]

Section 15. Laboratory Suite. Facilities shall be provided for the following and the size of the areas including equipment shall [~~will~~] depend on the patient workload:

(1) Hematology;

(2) Clinical chemistry. An acid-shower and eye washing facility shall be provided nearby;

(3) Urinalysis. A specimen toilet with hand-washing facility shall be provided nearby;

(4) Cytology;

(5) Bacteriology;

(6) Waiting area for ambulatory patients;

(7) Administrative support areas;

(8) Blood storage facilities;

(9) Blood specimen collection area. The collection area [It] shall contain a work counter, hand-washing facilities, and space for patient seating;

(10) Glass-washing and sterilizing facilities; and

(11) Recording and filing facilities.

Section 16. Physical Therapy Suite. If a physical therapy suite is addressed in [~~included by~~] the functional [~~narrative~~] program, the following items shall be provided:

(1) Office space;

(2) Waiting space;

(3) Treatment areas [~~area(s)~~] for thermotherapy, diathermy, ultrasonics, and hydrotherapy [~~, etc.~~] Cubicle curtains around each individual treatment area shall be provided for privacy purposes. Hand-washing facilities shall be provided, but one (1) lavatory or sink may serve more than one (1) treatment cubicle. Facilities for collection of wet and soiled linen or other material shall be provided;

(4) Exercise area [~~area(s)~~];

(5) Storage for clean linen, supplies, and equipment;

(6) Patient [~~Patients'~~] dressing areas, showers, lockers, and toilet rooms;

(7) Janitor's closet with floor receptor or service sink and storage space for housekeeping supplies and equipment; and

(8) Wheelchair and stretcher storage area.

Section 17. Morgue and Autopsy. (1) If autopsies are performed within the hospital, the following shall be provided:

(a) Refrigerated facilities for body-holding.

(b) Autopsy room. This room shall contain the following:

1. Work counter with sink equipped for hand washing;

2. Storage space for supplies, equipment and specimens;

3. Autopsy table;

4. Clothing change area with shower, toilet, and lockers; and

5. A janitor's closet containing a floor receptor or service sink with storage for housekeeping supplies and equipment for exclusive use in this area.

(2) If autopsies will be performed outside the hospital, only a well-ventilated body-holding room shall be provided.

Section 18. Pharmacy or Drug Room. An [~~If drugs are used, an~~] adequate supply of drugs and other medicinal agents shall be available at all times to meet the requirements of the hospital. Drugs [~~They~~] shall be stored in a safe manner and shall be kept properly labeled and accessible. Controlled substances and other dangerous or poisonous drugs shall be handled in a safe manner to protect against [~~their~~] unauthorized use. Controlled substances shall [~~must~~] be under double lock. There shall be adequate refrigeration for biologicals and drugs which require refrigeration. The existing laws, rules, and administrative regulations governing drugs and poisons shall be complied with.

Section 19. Dietary Department. Food service facilities shall be designed and equipped to meet the requirements of the functional [~~narrative~~] program. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling. If on-site conventional food preparation is used, the [~~The~~] department shall include the following facilities: [~~unless an acceptable commercially prepared dietary service, meals, and/or disposables are to be used. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling~~]

(1) Control station for the receiving of food supplies;[-]

(2) Food preparation facilities. Conventional food preparation systems shall have [~~require~~] space and equipment for food preparation [~~preparing~~], cooking, and baking. Convenience food service systems [~~such as frozen prepared meals, bulk packages entrees, and individual package portions,~~] or systems using contractual commissary services shall have [~~require~~] space and equipment for thawing, portioning, cooking, and [~~and/or~~] baking;[-]

(3) Hand-washing facilities [~~facility(ies)~~] located conveniently accessible in the food preparation area,[-]

(4) Patient meal [~~Patients' meals~~] service facilities[~~. Examples are these~~] required for tray assembly and distribution;[-]

(5) Dishwashing space. The dishwashing equipment [~~It~~] shall be located in a [~~the~~] room or alcove separate from the food preparation and serving area. Commercial-type dishwashing equipment shall be provided. Space shall [~~also~~] be provided for receiving, scraping, sorting, and stacking of soiled dishware and tableware prior to cleanup. The area shall be designed to allow clean dishware and tableware to be removed at a different location than the one used for the soiled dishware and tableware. A hand-washing lavatory shall be conveniently located;[-]

(6) Pot-washing facilities;[-]

(7) Refrigerated storage to accommodate a three (3) day minimum supply;[-]

(8) Dry storage to accommodate a three (3) day minimum supply;[-]

(9) Storage areas and sanitizing facilities for cans, carts, and mobile tray conveyors;[-]

(10) Waste storage facilities shall be located in a separate room easily accessible to the outside for direct pickup or disposal;[-]

(11) Dining space for ambulatory patients, staff, and visitors;[-]

(12) Offices [~~Office(s)~~] or desk spaces for dieticians or the dietary service manager;[-]

(13) Toilets with hand-washing facilities for use by the dietary staff shall be immediately available; and[-]

(14) Janitor's closet located within the department. The janitor's closet [~~It~~] shall contain a floor receptor or service sink with storage for housekeeping supplies and equipment to be used exclusively in this area.

Section 20. Administrative and Public Areas. The following shall be provided:

(1) Lobby. The lobby [~~It~~] shall include:

(a) Storage space for wheelchairs;

(b) Reception and information counter or desk;

(c) Waiting space [~~space(s)~~]; and

(d) Public toilet facilities designed for use by the physically handicapped.

(2) Interview space [~~space(s)~~] for private interviews relating to social services, credit, and admissions;[-]

(3) Director of nurses' office,[-]

(4) Staff toilet rooms;[-]

(5) Medical library facilities;[-]

(6) General or individual offices [~~office(s)~~] for business transactions, medical and financial records, administrative, and professional staff use;[-]

(7) Administrator's office;[-]

(8) Multipurpose room [~~room(s)~~] for conferences, meetings, and health education purposes, including provisions for showing visual aids; and[-]

(9) Storage for office equipment and supplies.

Section 21. Medical Records Unit. This unit shall include:

(1) Medical records administrator or[/] technician office or space;

(2) Active record storage area;

(3) Record review and dictating room; and

(4) Work area for sorting, recording, or microfilming

Section 22. Central Medical and Surgical Supply Department. The following areas shall be permanently separated from each other:

(1) Receiving and decontamination room. The room [~~It~~] shall contain work space and equipment for cleaning medical and surgical equipment and for the disposal [~~of~~] or processing of unclean material. Hand-washing facilities shall be provided.

(2) Clean workroom. This room shall be divided into work space, clean storage area and sterilizing and sanitizing facilities. Hand-washing facilities shall be provided.

(3) Storage area for clean supplies and sterile supplies. The storage area may [~~(May~~] be in a designated area in the clean workroom.[)]

(4) Equipment storage.

(5) Cart storage, if this type of system is utilized.

(6) Janitor's closet. The janitor's closet [~~It~~] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.

Section 23. Central Stores. The following shall be provided:

(1) Off-street unloading facilities;[-]

(2) Control station for receiving supplies; and[-]

(3) General storage rooms which are adequate in size to meet the needs of the facility.

Section 24. Laundry. On-site processing and off-site processing.

(1) If linen is to be processed in the hospital, the following shall be provided:

(a) Soiled linen receiving, holding and sorting room with hand-washing facilities;[-]

(b) Laundry processing room with commercial-type equipment which can process seven (7) days of linen needs within a regularly scheduled work week. Hand-washing facilities shall be provided,[-]

(c) Storage for laundry supplies,[-]

(d) Clean linen inspection and mending room,[-]

(e) Clean linen storage, issuing and holding room or area;[-]

(f) Janitor's closet. The janitor's closet [~~It~~] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department; and[-]

(g) Cart storage and cart sanitizing facilities.

(2)[~~(h)~~] Arrangement of equipment and procedures shall [~~be in a manner to~~] permit an orderly work flow with a minimum of cross traffic to maintain separation of [~~that might mix~~] clean and soiled operations.

(3)[~~(2)~~] If linen is to be processed off the hospital site, the following shall be provided:

(a) Soiled linen holding room with a hand-washing facility conveniently accessible; and[-]

(b) Clean linen receiving, holding, inspection and storage room [~~room(s)~~].

Section 25. Employee [~~Employee's~~] Facilities. (1) Female locker room. This room shall have lounge space, lockers for personal effects, and a separate toilet room. The area shall be designed for use by the physically handicapped. [~~In some cases~~] Shower facilities may be appropriate depending on the size of the facility.

(2) Male locker room. This room shall have lockers and a separate toilet room. The area shall be designed for use by the physically handicapped. [~~In some cases~~] Shower facilities may be appropriate depending on the size of the facility.

Section 26. Engineering Service and Equipment Areas. The following shall be provided.

(1) Room [~~Room(s)~~] or separate buildings [~~building(s)~~] for boilers, mechanical equipment and electrical equipment;

(2) Engineer's office;

(3) Maintenance shop;

(4) Storage room for building maintenance supplies;

(5) Storage room for central housekeeping equipment and supplies;

(6) Office and administrative support space for the person [~~person(s)~~] in charge of central housekeeping; and

(7) Yard equipment storage.

Section 27. Waste Processing Services. The following shall be provided:

(1) Waste storage and disposal. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques.

(2) A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of pathological and infectious waste. Infectious waste shall include, but not be limited to: dressing and material from open wounds, laboratory specimens, and all waste material from isolation patient rooms.

(3) Waste tissue and contaminated combustible solids shall be rendered safe by [~~such methods as~~] sterilization or incineration.

(4) Culture plates, tubes, sputum cups, contaminated sponges, and swabs [~~and the like~~] shall be sterilized before they are washed or discarded.

(5) Unpreserved tissue specimens from surgical or necropsy material shall [~~must~~] be disposed of by incineration.

Section 28. Details and Finishes. [~~All~~] details and finishes shall meet the following requirements:

(1) Details.

(a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.

(b) [~~All~~] doors to patient-room toilets and patient-room bathrooms shall swing outward or be equipped with hardware that will permit access in an emergency.

(c) If required by the functional [~~narrative~~] program, suitable hardware shall be provided on doors to patient toilet rooms in psychiatric nursing units so that access to these rooms can be controlled by the nursing staff.

(d) Windows and outer doors which may be frequently left in an open position shall be provided with screens.

(e) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use by wheelchairs and carts.

(f) [~~The location and arrangement of~~] lavatories and sinks shall be equipped with blade handles which [~~for hand-washing purposes~~] shall have [~~provide~~] a minimum of sixteen (16) inches clearance to each side of the centerline of the fixture.

(g) Towel dispensers or other hand-drying equipment shall be provided at [~~all~~] lavatories and sinks equipped for hand washing, except scrub sinks.

(h) Grab bars shall be provided at patient [~~all patients'~~] toilets, showers, tubs, and sitz baths. The bars shall have one and one-half (1 1/2) inches clearance to walls and shall be of sufficient strength and anchorage to sustain a concentrated load of 250 pounds for a period of five (5) minutes.

(i) Recessed soap dishes shall be provided at [~~all~~] showers and bathtubs.

(j) Mirrors shall not be installed at hand-washing fixtures in food preparation areas, [~~or in sensitive areas such as~~] nurseries, clean and sterile supply rooms or [~~supplies, and~~] scrub sink areas [~~sinks~~].

(k) Radiation protection requirements of facilities where sources of radiation are used or stored [~~x-ray and gamma ray installations~~] shall be approved by the Radiation Health [~~and Product Safety~~] Branch, Division of Public Health Protection and Safety [~~Office of Consumer Health Protection~~], Department for Public Health [~~Services~~], Cabinet for Health and Family Services [~~Human Resources~~]

(l) Ceiling heights shall be as follows:

1. Boiler room ceiling height shall be at least [~~not less than~~] two (2) feet and six (6) inches above the main boiler header and connecting piping with a minimum height of nine (9) feet.

2. Ceiling height of corridors, storage rooms, patient toilet rooms, and other minor rooms shall be at least [~~not less than~~] seven (7) feet and six (6) inches.

3. Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling-mounted surgical light fixtures shall have a height as required to accommodate the equipment or fixtures.

4. Ceilings of [~~All~~] other rooms shall be at least [~~not less than~~] eight (8) feet.

(m) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas, delivery suites, operating suites, or nurseries unless special provisions are made to minimize transmission of [~~such~~] noise.

(n) Boiler rooms, laundries, food preparation areas and other rooms containing heat-producing equipment [~~such as boiler rooms, laundries, and food preparation areas~~] shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

(o) Noise reduction criteria. Partition, floor, and ceiling construction in patient areas shall comply with Table 1, Section 33(1) of this administrative regulation.

(2) Finishes.

(a) Floor materials shall be easily cleanable and shall have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in food preparation [~~such~~] areas shall be resistant to food acids. In [~~all~~] areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet[~~, such as shower and bath areas, kitchen and similar work areas,~~] shall have a non-slip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable, and in the immediate area of plumbing fixtures the finish shall be smooth and moisture-resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free of spaces that may [~~can~~] harbor rodents and insects.

(d) Wall bases in kitchens, operating rooms, delivery rooms, and other areas subject to frequent wet cleaning methods shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that may [~~can~~] harbor harmful bacteria.

(e) Ceilings shall be cleanable. Ceilings in [~~and those in sensitive areas such as~~] surgical, delivery, nursery, [~~rooms~~] and isolation rooms shall be readily washable and without crevices that may [~~can~~] retain dirt particles. Surgical, delivery, nursery, and isolation rooms and [~~These sensitive areas along with the~~] dietary and food preparation areas shall have a finished ceiling covering [~~all~~] overhead piping and ductwork. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

(f) Acoustical type ceilings shall be provided for corridors in patient areas, nurses' stations, labor rooms, dayrooms, recreation rooms, dining areas, and waiting areas.

(g) Ceilings of patient rooms in psychiatric nursing units shall be of monolithic or bonded construction.

Section 29. Elevators. [~~General. All~~] Hospitals having [~~patients' facilities, such as~~] bedrooms, dining rooms, [~~or~~] recreation areas, [~~or critical services, such as~~] operating rooms, delivery rooms, diagnostic, or therapy areas, located on other than the main entrance floor, shall have elevators.

(1) Number of elevators.

(a) At least one (1) hospital-type elevator shall be installed if [~~where~~] one (1) to fifty-nine (59) patient beds are located on any floor other than the main entrance floor.

(b) At least two (2) hospital-type elevators shall be installed if [~~where~~] sixty (60) to 200 patient beds are located on floors other than the main entrance floor, or if [~~where~~] the major inpatient services are located on a floor other than those containing patient beds.

(c) At least three (3) hospital-type elevators shall be installed if [~~where~~] 201 to 350 patient beds are located on floors other than the main entrance floor, or if [~~where~~] the inpatient services are located on a floor other than those containing patient beds.

(d) If a hospital has [~~For hospitals with~~] more than 350 beds, the number of elevators shall be determined from a study of the hospital plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a hospital bed and attendant and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. The car door shall have a minimum clear opening of at least [~~not less than~~] three (3) feet and eight (8) inches.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two (2) way special service switch to permit cars to bypass [~~all~~] landing button calls and be dispatched directly to any floor.

Section 30. Construction. (1) Design. Every building and every portion thereof shall be designed and constructed to sustain [~~all~~] dead and live loads in accordance with accepted engineering practices and standards, including seismic forces if [~~when~~] applicable.

(2) Foundations. Foundations shall rest on natural solid bearing if a satisfactory bearing is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles, augured piles, poured caissons, or an equivalent designed to support the intended load without detrimental settlement, except that one (1) story buildings may rest on a fill designed by a soils engineer. If [~~When~~] engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and a certification of compliance with the job specifications. [~~All~~] Footings shall extend to a depth not less than one (1) foot below the estimated frost line.

(3) Natural disasters. Special provisions shall be made in the design of buildings in geographic areas where local experience reflects loss of life or extensive damage to buildings resulting from tornadoes or floods.

Section 31. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect or [~~and/or~~] engineer shall obtain from the contractor certification in writing that [~~all~~] mechanical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

(2) Incinerators. The design and installation shall comply with the applicable state regulations [~~current Kentucky standards~~] for control of air contaminants for incinerators [~~administrative regulations as applicable to hospitals~~].

(3) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) shall be provided and the combined capacity of the boilers shall [~~, based upon the published Steel Boiler Institute or Institute of Boiler and Radiation Manufacturer's net rating, must~~] be able to supply 150 percent of the normal requirements for [~~all~~] systems and equipment in the facility.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulation pumps shall be connected and installed to provide normal and standby service.

(c) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends, except that vacuum condensate returns need not be valved at each piece of equipment.

(4) Thermal and acoustical installation.

(a) Insulation shall be provided on the following within the building:

1. Boilers, smoke breeching, and stacks;

2. Steam supply and condensate return piping;

3. Hot water piping above 120 degrees Fahrenheit at [~~all~~] hot water heaters, generators, and converters;

4. Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;

5. Water supply and drainage piping on which condensation may occur;

6. Air ducts and casings with outside surface temperature below ambient dew point or temperature above eighty (80) degrees Fahrenheit; and

7. Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(b) Insulation on cold surfaces shall include an exterior vapor barrier.

(c) Duct linings shall not be used in systems supplying operating rooms, delivery rooms, recovery rooms, nurseries, isolation rooms of [~~and~~] intensive care units unless terminal filters of at least ninety (90) percent efficiency are installed downstream of the lining.

(5) Air-conditioning, heating, and ventilation systems.

(a) Temperatures and humidities.

1. The designed capacity of the systems shall provide the following temperatures and humidities in the areas noted below:

Area Designation	Temperature [~~Temperture~~] F.	Relative Humidity % (Min)	Relative Humidity % (Max)
Operating Rooms	68-76*	50**	60
Delivery Rooms	70-76*	50**	60
Recovery Rooms	75-80[~~30~~]	60	
Intensive Care Rooms	72-78*	30	60
Nurseries	75-80[~~30~~]	60	
Special Care Nursery	75-80*	30	60

*Variable temperature range required.

**Minimum relative humidity may be reduced to thirty (30) percent if the facility establishes a written policy prohibiting the use of flammable anesthetics.

2. For other areas occupied by inpatients, the indoor winter design temperature shall be seventy-five (75) degrees Fahrenheit. For all other occupied areas, the indoor winter design temperature shall be seventy-two (72) degrees Fahrenheit.

3. For all other occupied areas, the indoor summer design temperature shall be seventy-five (75) degrees Fahrenheit.

(b) Ventilation system details. [~~All~~] Air-supply and air-exhaust systems shall be mechanically operated. [~~All~~] Fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates as shown on Table 2, Section 33(2) of this administrative regulation[~~,~~] shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

1. Outdoor air intakes shall be located as far as practical but not less than twenty-five (25) feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical surgical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular or other noxious fumes. The bottom of outside air intakes serving central air systems shall be located as high as practical but not less than six (6) feet above ground level or, if installed above the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced in accordance with the pressure relationship as shown in Table 2, Section 33(2) of this administrative regulation.

3. [All] Air supplied to [sensitive areas such as] operating rooms, delivery rooms, [and] nurseries, and other sensitive areas shall be delivered at or near the ceiling of the area served and [all] return/exhaust air shall be removed near floor level. At least two (2) return/exhaust outlets shall be provided in each operating room and delivery room.

4. [All] Room supply, return, and exhaust outlets shall be located not less than three (3) feet above finished floor [AFF].

5. Isolation rooms and intensive care rooms may be ventilated by induction units if the induction units contain only a reheat coil and if only the primary air from a central system passes through the reheat coil.

6. [All] Central ventilation or air-conditioning systems shall be equipped with filters having minimum efficiencies as listed below:

Area Designation	Minimum No.of Filters	Filter Efficiencies %	
		No 1.	No 2
Sensitive Areas*	2	25	90
Patient Care, Treatment, Diagnostic and Related Areas	2	25	90**
Food Preparation and Laundry	1	80	--
Administrative, Storage, and Soiled Holding	1	25	--

*Includes operating rooms, delivery rooms, nurseries, recovery units and intensive care units.

**May be reduced to eighty (80) percent for systems using all-outdoor air.

7. If [Where] two (2) filter beds are required in central ventilation and air-conditioning equipment, Filter Bed No. 1 shall be located upstream of the air-conditioning equipment and Filter Bed No. 2 shall be located downstream of the supply fan, any recirculating spray water system, or [and] water reservoir type humidifiers. If [Where] only one (1) filter bed is required, it shall be located upstream of the air-conditioning equipment unless an additional prefilter is employed. In this case, the prefilter shall be located upstream of the equipment and the main filter may be located further downstream.

8. [All] filter efficiencies as listed above shall be average atmospheric dust spot efficiencies tested in accordance with the "American Society of Heating, Refrigerating, and Air-Conditioning Engineers" (ASHRAE) Standard 52-76.

9. Filter frames shall be durable and carefully dimensioned, and shall provide an airtight fit with the enclosing ductwork. [All] Joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage [leakages].

10. A manometer or its equivalent shall be installed across each filter bed serving sensitive areas or central air systems.

11. Ducts which penetrate construction intended for x-ray or other ray protection shall not impair the effectiveness of the protection.

12. Laboratories shall be provided with outdoor air at a rate of two (2) air changes per hour. If this ventilation rate does not provide the air required to ventilate fume hoods and safety cabinets, additional outdoor air shall be provided. A filter with ninety (90) percent minimum efficiency shall be installed in the air supply system at its entrance to the media transfer room.

13. Laboratory hoods for general use shall have a minimum average face velocity of seventy-five (75) feet per minute. Hoods in which infectious or highly radioactive materials are processed shall have a face velocity of 100 feet per minute and each hood shall have an independent exhaust system with the fan installed at the discharge point of the system. Hoods used for processing infectious materials shall be equipped with a means of disinfection.

14. Duct systems serving hoods in which highly radioactive materials and strong oxidizing agents are used shall be constructed of stainless steel for a minimum distance of ten (10) feet from the hood and shall be equipped with washdown facilities.

15. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the rooms and in adjoining areas.

(6) Plumbing systems. [All] Plumbing systems shall be designed and installed in accordance with the applicable state plumbing regulations [requirements of the current Kentucky plumbing standards administrative regulations applicable to hospitals].

(a) Plumbing fixtures.

1. The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material.

2. Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum of five (5) inches above the rim of the fixture. [All] Fixtures used by medical and nursing staff and [all] lavatories used by patients and food handlers shall be equipped with valves which can be operated without the use of hands. If [Where] blade handles are used for this purpose, they shall not exceed four and one-half (4 1/2) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long.

3. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(b) Water supply systems.

1. Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

2. Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

3. A backflow preventer or vacuum breaker [preventers (vacuum breakers)] shall be installed on hose bibbs, laboratory sinks, janitors' sinks, bedpan flushing attachments, autopsy tables, and [all] other fixtures to which hoses or tubing can be attached.

4. Flush valves installed on plumbing fixtures shall be of a quiet operating type.

5. Bedpan flushing devices shall be provided in each patient toilet room and in the soiled workrooms located in the patient nursing units.

6. An auxiliary water supply shall be available to provide potable water in case of emergencies.

(c) Hot water heating systems.

1. The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Use		
	[Use] Clinical	Dishwasher [Diswasher]	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp F.	125	180*	160**

*Temperature may be reduced to 160 degrees Fahrenheit[-] if a chloritizer is used. Required temperature must be provided throughout the wash and rinse cycles.

**Required temperature of 160 degrees Fahrenheit is that measured in the washing machine and shall be supplied so that the temperature will be maintained over the entire wash and rinse cycles.

2. Storage tanks [tank(s)] shall be fabricated from [or] corrosive-resistant metal or be lined with noncorrosive material.

(d) Drainage systems.

1. Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

2. Piping over operating and delivery rooms, nurseries, food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

3. Floor drains shall not be installed in operating and delivery rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms.

4. Building sewers shall discharge into a community sewerage system. If a community sewerage [Where such a] system is not

available, a facility providing sewage treatment shall be installed which conforms to [all] applicable local and state administrative regulations.

(7) Nonflammable medical gas systems. Installations shall be in accordance with the requirements of the National Fire Protection Association (NFPA) **99, Health Care Facilities and the NFPA 99C, Gas and Vacuum Systems** [~~56-A and 56-F~~]. The number, type, and location of outlets shall be as follows:

STATION OUTLETS FOR OXYGEN AND VACUUM (SUCTION) OUTLETS		
Location	Oxygen	Vacuum
Patient room for adult medical, surgical, [~~and for~~] postpartum, or [~~care; and~~] pediatric care	A	A
Examination and treatment room in nursing unit	B	B
Patient room for intensive care	C	C
Nursery and pediatric nursery	A	A
General operating room	F	F
Cystoscopy and special procedure room	D	D
Recovery room	E	E
Delivery room	F	G
Labor room	A	A
Emergency treatment room	D	D
Autopsy room	--	D

A - One (1) outlet accessible to each bed. One (1) outlet may serve two (2) beds.
B - One (1) outlet. Portable equipment may be considered acceptable in lieu of fixed outlets.
C - Two (2) outlets for each bed or provide one (1) outlet with Y-fitting.
D - One (1) outlet.
E - One (1) outlet for each bed.
F - Two (2) outlets.
G - Three (3) outlets.

Section 32. Electrical Requirements. (1) General.

(a) [~~All material including~~] Equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. [All] Materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(b) [All] Electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner. These [~~Such~~] tests shall show compliance with the governing codes and shall include conductive floors, isolated power centers, grounding continuity, and alarm systems.

(2) Switchboard and power panels. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panel boards shall be enclosed or guarded to provide a dead front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboard shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Overload devices shall be suitable for operating properly in the ambient temperature conditions.

(3) Panel boards. Lighting and appliance panel boards shall be located on the same floor as the circuits they serve.

(4) Lighting.

(a) [All] Spaces occupied by people, machinery, or [~~and~~] equipment within buildings, and the approaches thereto, and parking lots shall have lighting

(b) Patient [~~Patients'~~] bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms shall be mechanically operated to prevent the bulb from coming in contact with the bed linen. Patients' reading lights and other fixed lights not switched at the door shall have switch controls located convenient to the luminaire. A fixed type night light, mounted at approximately sixteen (16) inches above the floor, shall be provided in each patient room. [All] Switches for control of lighting in patient areas shall be of the quiet operating type.

(c) Operating and delivery rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the tables, except portable units, shall be connected to an independent circuit.

(d) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night. Refer to Table 3, Section 33(3) of this administrative regulation.

(5) Receptacles [~~(convenience outlets)~~].

(a) Anesthetizing locations. Each operating, delivery, and emergency room shall have at least three (3) receptacles. In locations where mobile x-ray is used, an additional outlet distinctively marked for x-ray use shall be provided.

(b) Bedroom. Each patient bedroom shall have duplex receptacles as follows:

1. One (1) on each side of the head of the bed;
2. One (1) for the television, if used; and
3. One (1) on another wall.

(c) Receptacles in pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliampere ground fault interrupters.

(d)[~~(c)~~] Nurseries. Each bassinet shall have a minimum of one (1) duplex receptacle. [~~In special care nurseries~~] Additional receptacles shall be provided in special care nurseries, dependent on the types of equipment which will be used to provide medical care.

(e)[~~(d)~~] Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart and within twenty-five (25) feet of ends of corridors. Receptacles in corridors of pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliampere ground fault interrupters.

(6) Equipment installation in special areas.

(a) Installation in anesthetizing locations. [All] Electrical equipment, devices, receptacles, and wiring shall be in accordance with NFPA **99, Health Care Facilities and the NFPA 99C, Gas and Vacuum Systems** [~~No. 56-A~~] as adopted by the State Fire Marshal's Office for hospitals.

(b) Facilities where sources of radiation are used or stored shall conform to applicable state regulations for radiation protection. [~~X-ray and gamma ray installations. X-ray stationary installations and mobile equipment shall conform to the current Kentucky standards for radiographic and radioisotope equipment and use administrative regulations applicable to hospitals.~~]

(c) **Equipment for displaying images** [~~X-ray film illuminator~~]. At least two (2) **x-ray illuminators or a monitor for displaying at least two (2) films or images simultaneously** [~~units~~] shall be installed in each operating room, emergency treatment room, and [~~in the~~] [~~x-ray~~] viewing room in [~~for~~] the radiology department.

(7) Nurses' calling system.

(a) General.

1. In general patient areas, each room shall be served by at least one (1) calling station and each bed shall be provided with a call button.

2. Two (2) call buttons serving adjacent beds may be served by one (1) calling station.

3. Calls shall register at an annunciator panel at the nurses' station and shall actuate a visible signal in the corridor at the patient room door, in the clean workroom, soiled workroom, the nourishment station, and the nurses' lounge of the nursing unit.

4. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections.

5. In rooms containing two (2) or more calling stations, indicating lights shall be provided at each station.

6. Nurses' calling systems that [~~which~~] provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(b) Patient [~~Patients'~~] emergency.

1. A nurses' call emergency button shall be provided for patient [~~patients'~~] use at each patient's toilet, bath, sitz bath, and shower

room on the nursing unit floors.

2. Call [~~Such~~] buttons shall be usable by a [~~collapsed~~] patient lying on the floor, and the[,] inclusion of a pull cord shall [~~will~~] satisfy this requirement.

(c) Intensive care. In areas [~~such as intensive care~~] where patients are under constant surveillance, the nurses' calling system may be limited to a bedside station that will actuate a signal that can be readily seen by the nurse.

(d) Staff [~~Nurses'~~] emergency. An emergency calling station, which may be used by staff [~~nurses~~] to summon assistance, shall be provided in each operating, delivery, recovery, emergency treatment and intensive care room, in nurseries, and in supervised nursing units for psychiatric [~~mental~~] patients.

(8) Fire alarm [~~alarms~~] and fire detection systems. The design and installation of fire alarm and fire detection [~~these~~] systems shall [~~must~~] be approved by the State Fire Marshal's Office.

(9) Emergency electrical

(a) General. To provide electricity during interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to [~~certain~~] circuits for lighting and power as set forth in paragraph (d) below.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set iff[~~, when~~] the normal service is supplied by one (1) or more central station transmission lines; or[.]

2. An emergency generating set or a central station transmission line iff[~~, when~~] the normal electric supply is generated on the premises.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system.

2. Generator sets shall be self-sufficient insofar as possible, without dependency on public utilities that may be subject to cutoff or outages. [~~Exception.~~]

3. A system of prime movers which is [~~are~~] ordinarily used to operate other equipment and alternately used to operate the emergency generators shall [~~generator(s) will~~] be permitted provided that the:

a. Number and arrangement of the prime movers are such that when one (1) [~~of them~~] is out of service, [(]due to breakdown or for routine maintenance[)], the remaining prime movers [~~mover(s)~~] can operate the required emergency generators; [~~generator(s)~~] and [~~provided that the~~]

b. Connection time requirements as listed in paragraph (e) of this subsection are met.

4. The emergency generator set shall be of sufficient kilowatt capacity to supply the [~~all~~] lighting and power load demands of the emergency electrical system.

5. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting [-]

a. Exits [~~Exitways~~] and [~~all~~] necessary ways of approach thereto, including exterior of exits, exit doorways, stairways, and corridors;[-]

b. Surgical, obstetrical, and emergency room operating lights;[-]

c. Nursery, laboratory, recovery room, intensive care areas, nursing station, medication preparation area, and labor rooms;[-]

d. Generator set location, switch-gear location, mechanical room, and boiler room;[-]

e. Elevator cabs; and[-]

f. Night light in patient rooms.

2. Equipment. Essential to life safety and for protection of important equipment or vital materials:

a. Nurses' calling system.

b. Paging or speaker systems, if intended for issuing instructions during emergency conditions. Alarms shall be required for medical gas systems.

c. Fire pump and jockey pump, if installed.

d. Pump for central suction system.

e. Sewerage or sump lift pump, if installed.

f. Blood bank refrigerator.

g. Selected receptacles in:

(i) Infant nurseries,[,]

(ii) Medicine dispensing areas;[,]

(iii) Cardiac catheterization laboratories;[,]

(iv) Angiographic laboratories;[,]

(v) Labor, operating, delivery, and recovery rooms;[,]

(vi) Dialysis units;[,]

(vii) Intensive care units;[,]

(viii) Emergency treatment rooms;[,]

(ix) Basic laboratory functions,[,] and

(x) Nurses' stations.

h. Duplex receptacles in patient corridors[,] and at least one (1) duplex receptacle located on the patient headwall in each patient room.

i. Elevator service that will reach every patient floor. Manual throw over facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors.

j. Ventilation of operating and delivery rooms.

k. Equipment necessary for maintaining telephone service.

3. Heating. Equipment for heating operating, delivery, labor, recovery, intensive care, and general patient rooms,[;] except that service for heating of general patient rooms will not be required under either of the following conditions:

a. The design temperature is higher than twenty (20) degrees Fahrenheit, based on the Median of Extremes as shown in the current edition of the "ASHRAE Handbook- [~~of~~] Fundamentals".

b. The hospital is supplied by two (2) or more electrical services supplied from separate generating sources, or a utility distribution network having multiple power input sources and arranged to provide mechanical and electrical separation, so that a fault between the hospital and generating sources will not likely cause an interruption of the hospital service feeders.

(e) Details. The emergency electrical system shall be so controlled that, after interruption of the normal electric power supply, the generator shall be [~~is~~] brought to full voltage and frequency and shall [~~it must~~] be connected within ten (10) seconds through one (1) or more primary automatic transfer switches to [~~all~~] emergency lighting systems; alarms systems; blood banks; nurses' calling systems; equipment necessary for maintaining telephone service; pump for central suction system; and task illumination and receptacles in operating, delivery, emergency, intensive care nursing areas, nurseries, patient rooms, and patient corridors. [~~All~~] Other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. If [~~Where~~] stored fuel is required for emergency generator operation, the storage capacity shall be sufficient to supply for at least [~~not less than~~] twenty-four (24) hours of continuous operation.

Section 33. (1) Table 1 - Sound Transmission Limitations in General Hospitals. [~~Table 2 - Pressure Relationships and Ventilation of Certain Hospital Areas. Table 3 - Lighting Levels for Hospitals.~~]

TABLE 1.
Sound Transmission Limitations in General Hospitals.

Location	Airborne Sound Transmission Class (STC) a*		Impact Insulation Class (IIC) b*
	Partitions	Floors	Floors
Patient[~~Patients'~~] room to patient [~~patients'~~] room	45	45	45

Corridor to patient [~~patients'~~] room	40	45	45 c*
Public space to patient [~~patients'~~] room d*	50	50	50 c*
Service areas to patient room e*	55	55	55 c*

a* - Sound transmission class (STC) shall be determined by tests in accordance with the methods set forth in ASTM International Standard E-90 and ASTM Standard E-413.
b* - Impact insulation class (IIC) shall be determined in accordance with criteria set forth in U.S. Department of Housing and Urban Development (HUD) FT/TS-24, "A Guide to Airborne, Impact and Structure Borne Noise - Control in Multi-family Dwellings."
c* - Impact noise limitation applicable only when corridor, public space, or service area is over a patient [~~patients'~~] room.
d* - Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.
e* - Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patient [~~patients'~~] rooms, offices, nurses' stations and similar occupied spaces shall be effectively isolated relating to noise transmission.
Note: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested.

(2) Table 2 - Pressure Relationships and Ventilation of Certain Hospital Areas.

TABLE 2.
PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN HOSPITAL AREAS.

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes Outdoor Air per Hour	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating room	P	--	5	12	--	No
Emergency operating room	P	--	5	12	--	No
Delivery room	P	--	5	12	--	No
Nursery	P	--	5	12	--	No
Recovery	O	--	2	6	--	No
Intensive Care	P	--	2	6	--	No
Patient room	O	--	1	4	--	--
Patient corridor	O	--	1	4	--	No
Isolation room	O	--	2	8	Yes	No
Isolation anteroom	N	--	2	8	Yes	No
Treatment room	O	--	2	8	--	No
X-ray, fluoroscopy room	N	--	2	8	yes	No
X-ray, treatment room	O	--	2	8	--	No
Physical therapy & hydrotherapy	N	--	2	8	Yes	No
Soiled workroom	N	--	2	8	Yes	No
Clean workroom	P	--	1	8	--	No
Autopsy and darkroom	N	--	3	12	Yes	No
Toilet room	N	--	--	10	Yes	No
Bedpan washing	N	--	2 room	8	Yes	No
Bathroom	N	--	2	10	Yes	No
Janitor's closet	N	--	--	10	Yes	No
Sterilizer equipment room	N	--	--	10	Yes	No
Linen and trash chute rooms	N	--	--	10	Yes	No
Laboratory, general	O	--	2	8	--	No
Laboratory, media transfer	P	--	2	8	--	No
Food preparation	O	--	2 centers	10	--	No
Dishwashing room	N	--	2	10	Yes	No
Dietary dry storage	O	--	--	2	--	No
Laundry, general	O	--	2	10	--	No
Soiled linen sorting & storage	N	--	2	10	Yes	No
Clean linen storage	P	--	1	4	--	No
Central medical & surgical supply:						
Soiled or decontamination room	N	--	2	10	Yes	No
Clean workroom & supply storage	P	--	2	8	--	No

(a) P = Positive
(b) N = Negative
(c) O = Equal
(d) -- = Optional

(3) Table 3 - Lighting Levels for Hospitals

TABLE 3.
LIGHTING LEVELS FOR HOSPITALS

Area	Foot-candles*
Administrative and lobby areas, day	100
Administrative and lobby areas, night	20
Chapel or quiet area	30
Corridors and interior ramps	30
Corridor night lighting	10
Dining area and kitchen	50
Doorways	10
Examination and treatment room:	
General	50
Examining table	100
Exit stairways and landings	30
Janitor's closet	20

Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk or counter, for charts & records	150
Nurses' medicine area, preparations & storage	100
Occupational therapy	30
Patient care unit or room, general	10
Patient care room, reading	50
Patient care room, night light (variable)	.5 to 1 5
Physical therapy	30
Stairways other than exits	50
Toilet and bathing facilities	30
Clean workroom	100
Soiled workroom	100
Nurses' lounge	30
Laundry, general	50

*Minimum on task at anytime.

Section 34. New Construction and Renovation Facility Requirements. (1) Unless otherwise required by this section of this administrative regulation, effective June 1, 2008, hospital plans submitted for approval to the licensing agency shall be compliant with the standards established in chapters 1 6 and 2.1 of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(2) Unless otherwise required by this section of this administrative regulation, a hospital shall not be required to comply with requirements established in other chapters of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition, as referenced in Chapter 2.1.

(3) Hospital plans submitted for approval to the licensing agency after the effective date of this regulation and prior to June 1, 2008 may meet either the requirements established in this section or in sections 6-33 of this administrative regulation.

(4) An endoscopy suite shall comply with requirements established in Chapter 3.9, **Sections 2.3 through 3.5** [~~paragraphs 2-3-3-5~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition. A hospital shall comply with requirements established in other chapters of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition, as referenced in Chapter 3.9, **Sections 2.3 through 3.5** [~~paragraphs 2-3-3-5~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(5) A psychiatric nursing unit patient room shall comply with requirements established in Chapter 2.3, **Sections 2.1 through 2.1.1.6** [~~paragraphs 2-1-2-1.1-6~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition, as referenced in Chapter 2.1, **Section 3.8.2** [~~paragraph 3-8-2~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(6) Psychiatric nursing unit support areas shall comply with requirements established in Chapter 2.3, **Sections 2.6.1 through 2.9.4** [~~paragraphs 2-6.1-2-9-4~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(7) A seclusion treatment room in a psychiatric nursing unit shall comply with requirements established in Chapter 2.3, **Sections 2.2.1 through 2.2.1.5** [~~paragraphs 2-2-1-2-2-1-5~~]of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition, as referenced in Chapter 2.1, **Section 3.8.3** [~~paragraph 3-8-3~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(8) A child psychiatric unit shall comply with requirements established in Chapter 2.3, **Sections 2.3 through 2.3.3** [~~paragraphs 2-3-2-3-3~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(9) A geriatric, Alzheimer's, or other dementia unit shall comply with requirements established in Chapter 2.3, **Sections 2.4 through 2.4.2.3** [~~paragraphs 2-4-2-4-2-3~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(10) Outpatient surgery and post-anesthetic care provided in the surgical suite of the hospital, in a separate unit of the hospital, or in a separate facility licensed as part of the hospital, shall comply with the requirements established in Chapter 3.7, **Sections 1.1 through 2.3.1 and Sections 2.3.1.2 through 6.4.1** [~~paragraphs 1-1-2-3-1 and paragraphs 2-3-1-2-6.4-1~~] of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition. Class A operating rooms shall not be allowed.

(11) When directed by the "Guidelines for Design and Construction of Health Care Facilities", 2006 edition, to "see" another section of the Guidelines, a hospital shall comply with the language of the section to which it has been referred by the word "see" if the section is incorporated by reference in Section 35 of this administrative regulation.

(12) Notwithstanding the version of a referenced code or standard in the "Guidelines for Design and Construction of Health Care Facilities", 2006 edition, a hospital shall meet the version of the code or standard adopted by the state authority having jurisdiction.

(13) Outpatient services licensed as part of the hospital shall comply with requirements established in this administrative regulation and shall be provided in the main hospital building or in buildings on the premises or contiguous to the premises of the hospital.

(14)[~~(12)~~] A patient room shall have a window with a sill that is not more than three (3) feet above the floor and not less in area than eight (8) percent of the total floor area of the room.

(15)[~~(13)~~] Transportable or relocatable units utilized by the applicant or licensee shall:

(a) Comply with requirements established in this section; and

(b) Be accessible to the facility by a covered walkway that:

1. Ensures a patient is protected from the outside elements; and

2. Provides access to a patient in a wheelchair or on a stretcher.

(16)[~~(14)~~] Prior to completion of construction or renovation, the licensee or applicant shall obtain from the contractor certification in writing that mechanical and electrical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

Section 35. Incorporation by Reference. (1) The following material is incorporated by reference: Chapter 1.2, **Sections 2.1 through 2.3.2** [~~paragraphs 2-1-2-3-2~~]; Chapter 1 5, **Sections 1.1 through 2.3.3.2** [~~paragraphs 1-1-2-3-3-2~~]; Chapter 1.6; Chapter 2.1; Chapter 2 3, **Sections 2.1 through 2.1.1.6** [~~paragraphs 2-1-2-1-1-6~~]; Chapter 2 3, **Sections 2.2.1 through 2.2.1.5** [~~paragraphs 2-2-1-2-2-1-5~~]; Chapter 2.3, **Sections 2.3 through 2.3.3** [~~paragraphs 2-3-2-3-3~~]; Chapter 2.3, **Sections 2.4 through 2.4.2.3** [~~paragraphs 2-4-2-4-2-3~~]; Chapter 2 3, **Sections 2.6.1 through 2.9.4** [~~paragraphs 2-6-1-2-9-4~~]; Chapter 3.7, **Sections 1.1 through 2.3.1 and 2.3.1.2 through 6.4.1** [~~paragraphs 1-1-2-3-1 and 2-3-1-2-6-4-1~~]; and Chapter 3.9, **Sections 2.3 through 3.5** [~~paragraphs 2-3-3-5~~], of the "Guidelines for Design and Construction of [~~Hospital and~~] Health Care Facilities", 2006 edition.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, Phone: 502-564-7905, Fax. 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven D. Davis or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides licensure requirements for plan submission, structural specifications, plant requirements, and maintenance of hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the structural specifications, plant requirements, and mainte-

nance of hospitals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042 requires that the Kentucky Cabinet for Health and Family Services regulate health facilities and health services. This administrative regulation establishes the requirements for plan submission, structural specifications, and plant requirements for new construction, renovation, and maintenance of hospital facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the licensure requirements for plan submission, structural specifications, plant requirements, and maintenance of hospitals.

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

(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation will bring Kentucky law into conformity with industry standards regarding construction and renovation of hospitals. The amended after comments regulation updates Section 12(2) and Section 32(6)(c) related to x-ray illuminators, by allowing other monitors that can display at least two (2) films or images simultaneously. Throughout 902 KAR 20:009, the regulation refers to the "Guidelines for Design and Construction of Hospital and Health Care Facilities". However, the correct title of this publication is "Guidelines for Design and Construction of Health Care Facilities". Therefore, the amended after comments regulation updates each reference to the "Guidelines" accordingly. The amended after comments regulation also replaces each mention of the term "paragraph" with the term "section" when referring to requirements established by the "Guidelines for Design and Construction of Health Care Facilities". The OIG also amended 902 KAR 20:009 throughout and replaced each hyphen, e.g. 1.5-2.3.3.2, with the word "through". A statement such as: "The licensee or applicant shall complete the planning and design requirements established in Chapter 1.5, Paragraphs 1.1-2.3 3 2 of the 'Guidelines for Design and Construction of Health Care Facilities'" was revised by the amended after comments regulation as "The licensee or applicant shall complete the planning and design requirements established in Chapter 1.5, Sections 1.1 through 2.3.3.2 of the 'Guidelines for Design and Construction of Health Care Facilities'". These changes will assure consistency with the nomenclature used by the "Guidelines". Finally, for installation of nonflammable medical gas systems, the amended after comments regulation replaced references to the NFPA 56-A and 56-F with references to the NFPA 99, Health Care Facilities, and the NFPA 99C, Gas and Vacuum Systems.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation has been requested by the hospital provider community in order to update hospital facility specification requirements. This administrative regulation was last amended in January of 1990 and is no longer consistent with accepted industry standards. The amended after comments regulation was necessary to address comments submitted during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.042 mandates that the Kentucky Cabinet for Health and Family Services license, regulate, and inspect health care facilities and health services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will bring Kentucky's current construction and renovation requirements into line with accepted architectural standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 116 hospitals currently licensed in the Commonwealth will be affected by this regulation when undergoing significant renovation or new construction.

(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: New construction or renovation plans submitted by hospital licensees or applicants after June 1, 2008 will be required to meet select sections of the "Guidelines for Design and Construction of Health Care Facilities", 2006 edition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to comply with the amendment to the administrative regulation as most hospitals currently follow the "Guidelines for Design and Construction of Health Care Facilities".

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Confusion as to requirements for hospital construction and renovation will be eliminated as Kentucky standards will conform to national industry standards.

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

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this amendment to the administrative regulation will be from state general fund dollars and fees generated for review of plans and specifications for construction or renovation of hospitals pursuant to 902 KAR 20:008 ($ 05 per sq. ft. or $100 minimum).

(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 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this amendment applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or 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 Cabinet for Health and Family Services will be required to implement the standards established in 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 216B.042, KRS 216B.105.

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? There will be no additional revenue generated for state or local government for the first year that this amended administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government for subsequent years after this amended administrative regulation becomes effective.

(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 during subsequent years.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6317

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 citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability, including a consumer directed option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351 [~~MAP-351B~~];

(b) Submitted to the department;

1. For a level of care determination; and

2. [~~(c) Conducted prior to an individual's initial admission to the waiver and at least~~] Annually thereafter.

(2) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(3) "Behavior support specialist" means an individual who has a master's degree **from an accredited institution** with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waivers that allow recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

(10) [~~(5)~~] "DCBS" means the Department for Community Based Services.

(11) [~~(6)~~] "Department" means the Department for Medicaid Services or its designee.

(12) [~~(7)~~] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable to mental retardation or related conditions that:

1. Result in impairment of general intellectual functioning and adaptive behavior similar to that of a person with mental retardation; and

2. Are a direct result of, or are influenced by, the person's substantial cognitive deficits.

(13) [~~(8)~~] "DMHMR" means the Department for Mental Health and Mental Retardation Services.

(14) [~~(9)~~] "DMR" means the Division of Mental Retardation in the Department for Mental Health and Mental Retardation Services.

(15) [~~(10)~~] "Electronic signature" is defined in KRS 369.102.

(16) [~~(11)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(17) [~~(12)~~] "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(18) [~~(13)~~] "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(19) [~~(14) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal representative, support coordinator, or others designated by an SCL recipient.~~

~~(15)~~] "Level of care determination" means a determination by the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(20) [~~(16)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2) [~~means a person licensed pursuant to KRS 335.300 to 335.399~~].

(21) [~~(17)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3) [~~means a person licensed pursuant to KRS 335.500 to 335.599~~].

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

(23) [~~(19)~~] "Mental retardation" means that a person has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of approximately seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health, and safety; and

(d) Had an onset before eighteen (18) years of age.

(24) [~~(20)~~] "Occupational therapist" means an individual who is licensed as defined in accordance with KRS 319A.010.

(25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards the cost of care in order to maintain Medicaid eligibility.

(27) [(~~21~~)] "Physical therapist" means an individual who is licensed as defined in accordance with KRS 327.010.

(28) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(29) "Plan of Care" or "POC" means a written individualized plan developed by:

(a) An SCL recipient or an SCL recipient's legal representative;

(b) Case manager or support broker; and

(c) Other designated by the SCL recipient if the SCL recipient designates any other.

(30) [(~~22~~)] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(31) [(~~23~~)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32) [(~~24) "Qualified mental retardation professional" or "QMRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and meets the professional criteria in accordance with 42 C.F.R. 483.430.~~

~~(25)~~)] "Registered nurse" or "RN" means a person who is currently licensed as defined in KRS 314.011(5), and who has one (1) year or more experience as a professional nurse.

(33) Representative is defined in KRS 205.5605(6).

(34) "SCL mental retardation professional" or "SCL MRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and:

(a) Is a doctor of medicine or osteopathy;

(b) Is a registered nurse; or

(c) Holds at least a bachelor's degree **from an accredited institution** in a human services field including sociology, special education, rehabilitation counseling, or psychology.

(35) [(~~26~~)] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(36) [(~~27~~)] "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(37) [(~~28~~)] "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.

(38) [(~~29~~)] "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(39) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance and support to a consumer; and

(b) Assist the consumer in any other aspects of CDO.

(40) [(~~30~~)] "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or a developmental disability.

(41) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

(a) Be placed on the SCL waiting list in accordance with Section 7[6] of this administrative regulation;

(b) Receive notification of potential SCL funding in accordance with Section 7[6] of this administrative regulation;

(c) Meet ICF-MR-DD patient status requirements established in 907 KAR 1:022;

(d) Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(e) Submit an application packet to the department [~~DMHMR~~] which shall contain:

1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. [~~The Freedom of Choice of Home and Community Based Waiver for Persons with MR-DD Service Providers Form, MAP-4102,~~

~~3.~~] The MAP-351 [~~MAP-351B~~] Assessment Form;

3. [~~4. The level of care determination;~~

~~5.~~] The results of a physical examination that was conducted within the last twelve (12) months;

4. [~~6.~~] A MAP-10, statement of the need for long-term care services, which shall be signed and dated by a physician or an SCL MRP [~~a QMRP~~] and be less than one (1) year old;

5. [~~7.~~] The results of a psychological examination completed by a licensed psychologist or psychologist with autonomous functioning;

6. [~~8.~~] A social case history which is less than one (1) year old;

7. [~~9.~~] A projection of the needed supports and a preliminary MAP-109 [~~MAP-145-SCL~~] plan of care for meeting those needs; and

8. [~~10.~~] A MAP-24C documenting an individual's status change; and

9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and

(f) Receive notification of an admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(c) An ICF-MR-DD level of care determination shall be performed by the department at least once every twelve (12) months.[~~; and~~

~~(d) An SCL provider shall notify the local DCBS office and the department on a MAP-24C form if an SCL recipient is:~~

~~1. Terminated from the SCL waiver program;~~

~~2. Admitted to an ICF-MR-DD facility; or~~

~~3. Transferred to another Medicaid waiver program.~~]

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or other facility.

(4) The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-MR-DD services.

(5) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.

1. The individual or legal representative shall have the burden of documenting good cause, including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the plan of care [~~ISP~~] for a period greater than sixty (60) consecutive days without good cause

shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or

(d) An SCL recipient does not meet ICF-MR-DD patient status criteria.

(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

(a) Simultaneous notice to the SCL recipient or legal representative, [and] the case manager or support broker, the department, and DMR at least thirty (30) [~~twenty (20)~~] days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24C to the department and to DMR at the time [~~DMR-001 to DMHMR at least twenty (20) days prior to the effective date~~] of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;

2. Provide assistance to the SCL recipient in making contact with another SCL provider;

3. Arrange transportation for a requested visit to an SCL provider site;

4. Provide a copy of pertinent information to the SCL recipient or legal representative;

5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department and to DMR [~~and to DMHMR~~].

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDQ Provider Participation. (1) In order to provide a non-CDQ [an] SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall.

(a) Be certified by the department prior to the initiation of the service;

(b) Be recertified at least annually by the department; and

(c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20:078.

(3) An SCL provider shall have a governing body that shall:

(a) Be a legally constituted entity within the Commonwealth of Kentucky;

(b) Not contain a majority of owners;

(c) Be responsible for the overall operation of the organization that shall include:

1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;

2. Appointing and annually evaluating the executive director;

3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;

4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and

5. Orienting a new member of the governing body to the operation of the organization, including the roles and responsibilities of board members.

(4) An SCL provider shall:

(a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient.

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an SCL recipient for whom they cannot meet the support needs;

(c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and

(d) Document any denial for a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(5) An SCL provider shall maintain documentation of its operations which shall include:

(a) An annual review of written policy and procedures;

(b) A written description of available SCL waiver services;

(c) A current table of organization;

(d) A memorandum of understanding with an SCL case management provider with whom they share plans of care [~~individual support plans~~];

(e) Information regarding satisfaction of an SCL recipient and the utilization of that information;

(f) A quality improvement program; and

(g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(6) An SCL provider shall:

(a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;

(b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;

(c) Meet the following requirements if responsible for the management of SCL recipient funds:

1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and

3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:

(a) Support empowerment and informed decision-making;

(b) Support and assist people to remain connected to natural support networks; and

(c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction by direct care staff;

(c) Require prompt notification of any unusual occurrence;

(d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's right of privacy;

(e) Require involvement in decision making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:

(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:

1. The right to time, space, and opportunity for personal privacy;

2. The right to communicate, associate and meet privately with the person of choice;

3. The right to send and receive unopened mail;

4. The right to retain and use personal possessions including clothing and grooming articles; and

5. The right to private, accessible use of the telephone;

(b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).

(10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or

2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);

(b) All records and incident reports shall be made available to the:

1. [~~The~~] department;

2. DMHMR or its designee;

3. [~~The Commonwealth of Kentucky,~~] Cabinet for Health and Family Services, Office of Inspector General or its designee;

4. [~~The United States~~] General Accounting Office or its designee;

5. [~~The Commonwealth of Kentucky,~~] Office of the Auditor of Public Accounts or its designee;

6. [~~The Commonwealth of Kentucky,~~] Office of the Attorney General or its designee;

7. DCBS [~~The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services~~]; or

8. [~~The~~] Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

(12) An SCL provider shall maintain a record for each SCL recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error that is initialed and dated; and

(d) Contain no blank lines in between each entry.

(13) A record of each SCL recipient who is served shall:

(a) Contain all information necessary for the delivery of the SCL recipient's services;

(b) Be cumulative;

(c) Be readily available;

(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation;

(e) Contain the following specific information:

1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);

2. The intake or face sheet;

3. The MAP-351 [~~MAP-351B~~] Assessment form completed at least annually;

4. The current plan of care [~~ISP~~];

5. The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes;

6. A list containing emergency contact telephone numbers;

7. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;

8. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

9. A recognizable photograph of the SCL recipient;

10. Legally-adequate consent, updated annually, for the provision of services or other treatment requiring emergency attention and shall be located at each service site;

11. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;

12. The SCL recipient's social history updated at least annually;

13. The results of an annual physical exam;

14. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

15. Psychological evaluation;

16. [~~Original and~~] Current level of care certification; and

17. The MAP-552K, Department for Community Based Services Notice of Availability for Long Term Care/Waiver Agency/Hospice Form in the case management and residential record; [~~and~~

~~18. A copy of the approved SCL-1 form;~~]

(f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

(g) Have the safety from loss, destruction or use by an unauthorized person ensured by the provider;

(h) Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record; and

(i) Have a corresponding legend which the provider shall make readily accessible.

(14) An SCL provider shall:

(a)1. Ensure that each staff and volunteer performing direct care or a supervisory function **has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result**[~~, prior to providing direct care to a recipient,~~] [~~has tested negatively for tuberculosis~~] within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; [~~and~~]

2. Maintain documentation of each staff person's and if a volunteer performs direct care or a supervisory function, the volunteer's **annual TB risk assessment or** negative tuberculosis test;

3.a. Ensure that an employee or volunteer who tests positive for TB or has a history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and

b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work he or she shall be administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease; and

4. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present;

(b) Have written personnel guidelines for each employee to include:

1. Salary range;

2. Vacation and leave procedures;

3. Health insurance;

4. Retirement benefits;

5. Opportunity for continuing education; and

6. Grievance procedures;

(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;

(d) Annually review each job description;

(e)[~~1.~~] For each potential employee[~~, prior to employment,~~] obtain:

1. Prior to employment, the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

2. Within **thirty (30)**[~~fourteen (14)~~] days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to employment, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(f) Annually, for twenty-five (25) percent of employees ran-

domly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

(g) For a volunteer expected to perform direct care or a supervisory function obtain:

1. Prior to the date the individual began serving as a volunteer, the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

2. Within **thirty (30)**[~~fourteen (14)~~] days of the date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to the date the individual began serving as a volunteer, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing direct care staff or a supervisory function, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

(i) Not employ or place an individual as a volunteer who:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction;

3. Has a conviction of abuse or sale of illegal drugs;

4. Has a conviction of abuse, neglect or exploitation;

5. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or

6. Is listed on the nurse aide abuse registry;

(j) Not **permit an employee or** [~~employ or place an individual as a~~] volunteer to transport an SCL recipient if the individual has a driving under the influence (DUI) conviction during the past year; and

(k) [~~a criminal record check from the Administrative Office of the Courts in each state in which the individual resided or worked in during the previous year; or~~

~~2. For an employee who resided or worked outside the Commonwealth during the previous year, obtain a criminal record check from the Administrative Office of the Courts or the state's designated equivalent agency;~~

~~(f) For twenty-five (25) percent of employees, randomly selected, obtain a criminal record check from the Administrative Office of the Courts, or other states designated equivalent annually for each state in which the individual resided or worked in during the previous year;~~

~~(g) Obtain a criminal record check from the Administrative Office of the Courts prior to placement as a volunteer performing direct care staff or a supervisory function, and twenty-five (25) percent of volunteers, randomly selected, annually thereafter if the individual is placed;~~

~~(h) Not employ or place an individual as a volunteer with a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction; and~~

~~(i)~~] Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall have:

(a) [~~Have~~] An executive director who:

1.a. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; or

b. Is a registered nurse; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;

(b) [~~Have~~] A program director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;

2. Is an SCL MRP [~~a QMRP~~]; and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) [~~Have~~] Adequate direct-contact staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Is able to adequately communicate with recipients and staff;

2. Has a valid Social Security number or valid work permit if not a U.S. citizen;

3. Can understand and carry out instructions; and

4. Has ability to keep simple records; and

(d) [~~Has~~] Adequate supervisory staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;

2. Is able to adequately communicate with the recipients, staff, and family members;

3. Has a valid Social Security number or valid work permit if not a U.S. citizen; and

4. Has ability to perform required record keeping.

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. An operational smoke detector placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahrenheit;

(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

1. Safe storage and use; and

2. That firearms and ammunition are permitted:

a. Only in a family [~~care~~] home provider or an adult foster care home; and

b. Only if stored separately and under double lock;

(f) Establishing [~~Establish~~] written procedures concerning the safe storage of common household items;

(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(h) Unless the employee is a licensed or registered nurse, ensuring that staff administering medication:

1. Have specific training provided by a licensed medical professional per a DMR-approved curriculum and documented competency on medication administration, medication cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and

d. Be documented on a medication administration form and properly disposed of, if discontinued; and

(i) Policy and procedures for ongoing monitoring of medication administration.

(17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include instruction for notification procedures and the use of

alarm and signal systems to alert an SCL recipient according to his or her disability;

(c) Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and

(d) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;

(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;

(c) Require documentation of all training which shall include:

1. The type of training provided.

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(d) Ensure that each employee prior to independent functioning, completes training which shall include:

1. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

3. Crisis prevention and management;

4. Identification and prevention of abuse, neglect, and exploitation;

5. Rights of individuals with disabilities; and

6. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(e) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include;

1. Medication administration training per cabinet-approved curriculum;

2. Medications and seizures;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

5. Crisis prevention and management,

6. Identification and prevention of abuse, neglect, and exploitation;

7. Rights of individuals with disabilities; and

8. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(f) Ensure that all employees complete core training, consistent with a DMHMR-approved curriculum, no later than six (6) months from the date of employment, which shall include:

1. Values, attitudes, and stereotypes;

2. Building community inclusion;

3. Person-centered planning;

4. Positive behavior support;

5. Human sexuality and persons with disabilities,

6. Self determination; and

7. Strategies for successful teaching;

(g) Not be required to receive the training specified in this section if the provider is:

1. An occupational therapist providing occupational therapy;

2. A physical therapist providing physical therapy;

3. A psychologist or psychologist with autonomous functioning providing psychological services; or

4. A speech therapist providing speech therapy; [~~and~~]

(h) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:

1. Orientation to the agency;

2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Cardiopulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

(i) On or after the first day of the month following the effective date of this emergency administrative regulation, ensure that each new case manager hired complete DMR-approved case management training within[:

~~1.~~] The first **six (6)**[~~three (3)~~] months from the date of hire[~~; or~~

~~2. As soon as possible following the third month of hire if the case manager is unable to complete training within the first three (3) months due to unavailability of the training~~]

Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

(a) Be prior authorized by the department; and

(b) Be provided pursuant to the plan of care [~~individual support plan~~].

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a nonresidential or community setting that may;

a. Be a fixed location; or

b. Occur in public venues.

4. Not be diversional in nature;

5. Be provided as on-site services which shall:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or

c. Prepare the participant for transition from school to work or adult support services;

6. Be provided as off-site services which:

a. Shall include services provided in a variety of community settings;

b. Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Shall be designed to result in increased ability to access community resources without paid supports;

d. Shall provide the opportunity for the participant to be involved with other members of the general population;

e. May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;

f. May be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and

g. May be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;

9. Be provided at a time mutually agreed to by the recipient and provider;

10 a Be provided to recipients age twenty-two (22) or older;

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support ser-

vices,

11. Be documented by:

a. A time and attendance record which shall include

(i) The date of the service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service, and

b. A detailed monthly summary staff note which shall include:

(i) The month, day, and year for the time period covered by each note written;

(ii) [~~Progress toward outcomes identified in the ISP;~~

~~(iii)~~] Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) [~~(iv)~~] The signature, date of signature, and title of individual preparing the summary staff note;

12. Be limited to five (5) days per week, 255 days maximum per year;

13. Not exceed eight (8) hours per day, five (5) days [~~or forty (40) hours~~] per week; and

14. Not exceed sixteen (16) hours per day if provided in combination with community living supports or supported employment;

(b) An assessment service including a comprehensive assessment which shall:

1. Identify an SCL recipient's needs and the services that the SCL recipient or his or her family cannot manage or arrange for on his or her behalf;

2. Evaluate an SCL recipient's physical health, mental health, social supports, and environment;

3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;

4. Be conducted within seven (7) calendar days of receipt of the request for assessment;

5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his or her family by the assessor in the SCL recipients home; and

6. Not be reimbursable if the individual does not receive a level of care certification;

(c) A reassessment service which shall·

1. Determine the continuing need for SCL waiver services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures as for an assessment service;

4. Be conducted by a SCL case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall.

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors,

3. Include a functional assessment of the SCL recipient's behavior which shall include:

a An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded [~~precede~~] the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by SCL provider staff in all relevant environments and activities;

c. Be revised as necessary,

d. Define the techniques and procedures used,

e Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;

6. Include the monitoring of an SCL recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of an SCL provider involved in implementing the behavioral support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist who shall have:

a. A master's degree with formal graduate course work in a behavioral science; and

b. One (1) year of experience in behavioral programming;

9. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the behavioral specialist; and

10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;

(e) Case management which shall include:

1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings,

3. Assisting an SCL recipient and the support team to develop, update, and monitor the plan of care [~~ISP~~] which shall.

a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;

b. Be updated at least annually or as changes occur;

c. Be submitted on the MAP-351 [~~MAP-351B and MAP-145 SCL forms~~]; and

d. Include any modification [~~the addendum~~] to the plan of care [~~ISP~~] and be sent to the department [~~DMHMR~~] within fourteen (14) days of the effective date that the change occurs with the SCL recipient,

4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;

6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;

7. Timely distribution of the plan of care [~~ISP~~], crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient;

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipi-

ent;

14. Monitoring all of the supports provided to an SCL recipient;[-]

15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an ICF-MR-DD;

c. Admitted to a hospital. [or]

d. Transferred to another Medicaid Waiver Program; or

e. Moved to another SCL residence;

16. Establishing a human rights committee which shall.

a. Include an:

(i) SCL recipient;

(ii) Individual not affiliated with the SCL provider; and

(iii) Individual who has knowledge and experience in rights issues;

b. Review and approve, prior to implementation and at least annually thereafter, all plans of care [ISPs] with rights restrictions;

c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and

d. Review the use of a psychotropic medication by an SCL recipient [with or] without an Axis I diagnosis;

17. [16.] Establishing a behavior intervention committee which shall:

a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;

b. Be separate from the human rights committee;

c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and

d. Review the use of a psychotropic medication by an SCL recipient [with or] without an Axis I diagnosis and recommend an alternative intervention if appropriate;

18. [17.] Documentation with a monthly summary note which shall include:

a. Documentation of monthly contact with each chosen SCL provider which shall include monitoring of the delivery of services and the effectiveness of the [assessment of needs and] plan of care;

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

c. Progress towards outcomes identified in the plan of care [ISP];

19. [18.] Provision by a case manager who shall.

a. Have a bachelor's degree from an accredited institution in a human services field [in a human service];

b. Be a registered nurse licensed in accordance with KRS 314.011;

c. Be a qualified social worker;

d. Be a licensed marriage and family therapist;

e. Be a professional clinical counselor;

f. Be a certified psychologist; or

g. Be a licensed psychological practitioner;

20. [19.] Supervision by a case management supervisor who shall be an SCL MRP [a QMRP]; and

21. [20.] Documentation with a detailed monthly summary note which shall include:

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

b. Progression, regression, and maintenance toward outcomes identified in the plan of care [ISP]; and

c. The signature, date of signature, and title of the individual preparing the note;

(f) Children's day habilitation which shall be:

1. The provision of support, training, and intervention in the areas of:

a. Self-care;

b. Sensory/motor development;

c. Daily living skills;

d. Communication; and

e. Adaptive and social skills;

2. Provided in a nonresidential or community setting;

3. Provided to enable the recipient to participate in and access community resources;

4. Provided to help remove or diminish common barriers to participation in typical roles in community life;

5. Provided at a time mutually agreed upon by the recipient and provider;

6. Limited to:

a. Individuals who are in school and up to sixteen (16) years of age;

b. Up to eight (8) hours per day, five (5) days per week; and

c. Up to sixteen (16) hours per day in combination with community living supports; and

7. Documented by:

a. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly staff note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) [Progress toward outcomes identified in the ISP;

(iii)] Progression, regression, or maintenance of outcomes identified in the plan of care [ISP]; and

(iii) [(iv)] The signature, date of signature, and title of the individual preparing the summary staff note;

(g) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-basis;

5. Not be provided at an adult day-training or children's day-habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service, and

(iii) The signature, date of signature and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day and year for the time period each note covers;

(ii) [Progress toward outcomes identified in the ISP;

(iii)] Progression, regression and maintenance toward outcomes identified in the plan of care [ISP]; and

(iii) [(iv)] The signature, date of signature and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;

(h) Occupational therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the

highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by a licensed occupational therapist in accordance with 201 KAR 28:130; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. Beginning and ending time; and

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

(i) Physical therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of another SCL provider on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by a physical therapist or a certified physical therapist assistant supervised by a licensed physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

6. Documented by a detailed staff note which shall include:

a. Progress made toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. Beginning and ending time of the service; and

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

(j) Psychological services which shall:

1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;

2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;

3. Include:

a. The administration of psychological testing;

b. Evaluation;

c. Diagnosis; and

d. Treatment;

4. Be incorporated into the plan of care [~~ISP~~] with input from the psychological service provider for the development of program-wide support;

5. Be provided by a psychologist or a psychologist with autonomous functioning; and

6. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time of the service; and

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

(k) Residential support service which shall:

1. Include twenty-four (24) hour supervision in:

a. A staffed residence which shall not have greater than three (3) recipients of publicly-funded supports in a home rented or owned by the SCL provider;

b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than eight (8) SCL recipients;

c. A family [~~care~~] home provider which shall not have greater than three (3) recipients of publicly-funded supports living in the home; or

d. An adult foster care home which shall not have greater than three (3) recipients of publicly-funded supports aged eighteen (18) or over living in the home;

2. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;

3. Not utilize a motor home;

4. Provide a sleeping room which ensures that an SCL recipient:

a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;

b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;

c. Does not share a room with an individual who presents a potential threat; and

d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient's health and comfort;

5. Provide assistance with daily living skills which shall include:

a. Ambulation;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning; or

k. Medication management;

6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care [~~individual support plan~~];

7. Provide or arrange for transportation to services, activities, and medical appointments as needed;

8. Include participation in medical appointments and follow-up care as directed by the medical staff; and

9. Be documented by a detailed monthly summary note which shall include:

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

b. Progression, regression and maintenance toward outcomes identified in the plan of care [~~ISP~~];

c. Pertinent information regarding the life of the SCL recipient; and

d. The signature, date of signature, and title of the individual preparing the staff note;

(l) Respite service which shall be:

1. Provided only to an SCL recipient unable to independently administer self-care;

2. Provided in a variety of settings;

3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;

4. Provided only to an SCL recipient who resides in a family [~~care~~] home provider, adult foster care home, or his or her own or family's home;

5. Limited to 1440 hours per calendar year; and

6. Documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

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

(m) Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a MAP-95;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;

6. Meet applicable standards of manufacture, design and installation; and

7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;

(n) Speech therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;

2. A physician ordered habilitative service in a specified

amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Be provided by a speech therapist; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. The beginning and ending time; and

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

(o) Supported employment which shall be:

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

2. Provided in a variety of settings;

3. Provided on a one-to-one basis;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;

5. Exclusive of work performed directly for the supported employment provider;

6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

7. Documented by:

a. A time and attendance record with shall include:

(i) The date of service;

(ii) The beginning and ending time; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period the note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care [~~ISP~~]; and

(iii) The signature, date of signature and title of the individual preparing the note; and

8. Limited to forty (40) hours per week alone or in combination with adult day training.

Section 5. Consumer Directed Option. (1) Covered services and supports provided to an SCL recipient participating in CDO shall include:

(a) A home and community support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and

5 a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living.

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Leisure choices; or

(x) Participation in community activities; [and]

(b) A community day support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure or retirement activities;

4. Be based upon therapeutic goals and not diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(c) Goods or services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care **and support spending plan.**[;]

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO SCL setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on his or her behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if[:

~~(a)~~] Imminent danger to the consumer's health, safety, or welfare exists. [or

~~(b) The consumer fails to pay patient liability;~~]

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care;

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the SCL assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;

(d) Complete, and submit to the department and to DMR, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional SCL services.

(10) Upon an involuntary termination of CDO services, the department shall.

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) [~~Except in a case where a consumer failed to pay patient liability.~~] Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a US citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by

the Kentucky Administrative Office of the Courts or equivalent agency from any other state, for each state in which the individual resided or worked during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30)[fourteen (14)] days; and

2. If a consumer does not obtain a central registry check result within thirty (30)[fourteen (14)] days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) May be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraint;

3. [~~Involve a medication error resulting in a physician or emergency room visit;~~

~~4.~~] Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the case manager or support broker; and

4. [~~5.~~] Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery;

c. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.[~~a.~~] Be grave in nature;

2. Involve suspected abuse, neglect, or expolitation;

3. Involve a medication error which requires a medical intervention;

4. Be a death;

5. [~~b. Be a medication error that occurs over multiple days or results in a delay in obtaining critical medications; or~~

~~c. Be a medication error resulting in harm or hospitalization of the individual,~~

~~2.~~] Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker, and

6. [~~3.~~] Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. The guardian within eight (8) hours of discovery;

c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209; and

d. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day. The following documentation with a complete written report shall be submitted for a death:

(i) A current plan of care;

(ii) A current list of prescribed medications including PRN medications;

(iii) A current crisis plan;

(iv) Medication Administration Review (MAR) forms for the current and previous month;

(v) Staff notes from the current and previous month including details of physician and emergency room visits;

(vi) Any additional information requested by DMHMR;

(vii) A coroner's report when received; and

(viii) If performed, an autopsy report when received.

(3) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DMHMR, or designee on a monthly medication error report form by the 15th [~~tenth (10th)~~] of the following month.

Section 7. [~~6.~~] SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his or her region of origin in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department a completed MAP-620, Application for MR-DD Services, which shall include the following:

(a) A signature from a physician or an SCL MRP [~~a QMRP~~] indicating medical necessity;

(b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and

(c) Completion of the Axis I, II, and III

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

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

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

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

(a) Emergency The need shall be classified as emergency if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing;

b. Inappropriate hospitalization; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; [~~or~~]

5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS; or

6. Imminent or current institutionalization in an ICF-MR-DD;

(b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:

1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;

2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;

3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;

(c) Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as determined by:

1. The individual is currently receiving a service through another funding source that meets his or her needs;

2. The individual is not currently receiving a service and does not currently need the service;

3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or

4. The individual is less than twenty-one (21) years of age.

(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

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

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

(11) Maintenance of the SCL waiting list shall occur as follows:

(a) [~~During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need;~~

~~(b)~~] Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and

(b)1. [~~(c)~~] The department shall, at a minimum, annually update the waiting list during the birth month of an individual.

2. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program.

3. If a discrepancy is noted in diagnostic information at the time of the annual update, the department may request a current diagnosis of MR/DD signed by a physician or SCL MRP [~~QMRP~~], including documentation supporting the diagnosis.

4. The requested data shall be received by the department within thirty (30) days from the date of the letter.

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

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

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

(15) The criteria for removal from the SCL waiting list shall be:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) Review of documentation reveals that the individual does not have a mental retardation diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;

(d) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list; or

(e) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:

(a) The individual shall be moved to the future planning category; and

(b) The chronological date shall remain the same.

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

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

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

(20) An individual shall be allocated potential funding based upon:

(a) His or her region of origin in accordance with KRS 205.6317(3) and (4);

(b) His or her category of need; and

(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:

(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 8. [~~7.~~] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.

(2) A SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, and contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(3) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

Section 9. [~~8.~~] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in Section 7 [6] of this administrative regulation.

Section 10. [~~9.~~] Incorporation by Reference. (1) "Supports for Community Living Manual, **October**[~~April~~] 2007 [~~2006~~] edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

SHAWN CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 15, 2007

FILED WITH LRC: October 15 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage of home and community based waiver services provided as an alternative to institutionalization to individuals with mental retardation or a developmental disability. (The home and community based services program for individuals with mental retardation or a developmental disability is known as the "supports for community living" or "SCL" program).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(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 provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(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 provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(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 initial amendment establishes a consumer directed option (CDO) program that allows, in accordance with KRS 205.5606, Medicaid SCL recipients to choose their providers of non-medical services as well as how and when they will receive the services. SCL CDO services include home and community support services and community day support services listed in the consumer's approved plan of care. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. The initial amendment also requires SCL providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. The initial amendment further establishes what types of documentation must be provided to the department in case of death of an SCL recipient. The amendment after comments extends the central registry check timeframe from fourteen (14) days to thirty (30) days, requires that the Department for Medicaid Services (DMS) and the Department for Mental Retardation (DMR) be notified of an individual's involuntary termination from the SCL program at the same time as the SCL recipient or SCL recipient's legal guardian and the case manager or support broker and increases the notice period from twenty (20) days prior to the action date to thirty (30) days prior; specifies that a CDO service must be specified in a consumer's support spending plan; clarifies policy regarding an employee or volunteer who has had a driving under the influence (DUI) conviction within the past year; mandates that a new case manager complete case management training within six (6) months rather than three (3) months from the date of hire; deletes the requirement of monthly documentation of an individual's assessment of needs; clarifies that a behavior support specialist's master's degree or a supports for community living mental retardation professional's bachelor's degree must be from an accredited institution; adds the circumstance of an SCL recipient moving to another SCL residence as a circumstance to be included on a MAP-24C form; amends tuberculosis testing policy to comply with Department for Public Health policy; deletes the requirement that a recipient's consumer directed option (CDO) participation be terminated if they fail to pay patient liability; adds goods and services to the consumer directed option; and adds a Medication Error Report and Screening and Training Requirements to the Supports for Community Living Manual.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the CDO

program established by KRS 205.5606 for SCL recipients. The amendment after comments is necessary to relax provider administrative burden; to incorporate Department for Public Health tuberculosis testing policy; and expand consumer directed options for recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the CDO program for SCL recipients. The amendment after comments alters policy in accordance with the authorizing statutes and federal waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing CDO program for SCL recipients in accordance with KRS 205 5605 and KRS 205.5606. The amendment after comments alters policy in accordance with the authorizing statutes and federal waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect any Medicaid SCL waiver recipient who opts to participate in the CDO program as well as any individual who chooses to be a CDO provider.

(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: As a result of the initial amendment SCL waiver recipients may opt to participate in the consumer directed option program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed option services must meet basic requirements including: complete and submit a CDO provider agreement to the consumer's support broker, be at least eighteen (18) years old, pass a criminal background check, complete training identified by the consumer, report any suspected abuse, neglect or exploitation, demonstrate ability to safely attend to consumer, and be able to communicate effectively. As a result of the amendment after comments, providers must report medication errors on the Medication Error Report.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The initial amendment is required by KRS 205.5606 and does not impose a cost on regulated entities. The amendment after comments may result in administrative cost associated with reporting medication errors on the Medicaid Error Report.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the initial amendment, an SCL waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of nonmedical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and non-medical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers. The amendment after comments benefits SCL providers by mandating that a new case manager complete case management training within six (6) months rather than three (3) months from the date of hire and by deleting the requirement of monthly documentation of an individual's assessment of needs; benefits recipients by expanding the consumer directed option to include goods and services and by deleting the requirement that a recipient's consumer directed option (CDO) participation be terminated if they fail to pay patient liability.

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

(a) Initially: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and non-medical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time. DMS does not anticipate a fiscal impact resulting from the amendment after comments.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and non-medical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time. DMS does not anticipate a fiscal impact resulting from the amendment after comments.

(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 XIX of the Social Security Act and matching funds from 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: SCL providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff, volunteers, and for an annual sampling of staff. Central registry checks cost $10.00 per individual.

(9) Tiering: Is tiering applied? Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205.5606.

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 will affect each SCL waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and KRS 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This

amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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: No additional expenditures are necessary to implement this Amendment.

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

907 KAR 1:170. Reimbursement for home and community based waiver services.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, b, d, n

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066, Section 4; and

(b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

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

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB" means home and community based waiver.

(8) "HCB recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205.8451; and

(b) Meets the criteria for HCB [waiver] services as established in 907 KAR 1:160.

[~~(8) "Home and community based waiver" or "HCB waiver" means home and community based waiver services.~~]

(9) "Level I" means a reimbursement rate of up to two (2) dollars and fifty-seven (57) [~~thirty (30) dollars and eighty (80)~~] cents paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient [~~HCB waiver~~].

(10) "Level II" means a reimbursement rate of up to three (3) dollars and twelve (12) [~~thirty-seven (37) dollars and forty (40)~~] cents paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient [~~HCB waiver~~], if the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.

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

(12) "Occupational therapist" is defined by KRS 319A.010(3).

(13) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(14) "Physical therapist" is defined by KRS 327.010(2).

(15) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(16)[~~(14)~~] "Quality improvement organization" or "QIO" is defined in 42 C.F.R. 475.101.

(17)[~~(15)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. HCB Service Reimbursement. (1) Except as provided in Section 3 or 4 of this administrative regulation, the department shall reimburse for a home and community based waiver service provided in accordance with 907 KAR 1:160 at the lessor of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	$100.00	Entire assessment process
Reassessment	$100.00	Entire reassessment process
Case Management	$15.00	15 minutes
Homemaking	$13.00	30 minutes
Personal Care	$15.00	30 minutes
Attendant Care	$11.50	1 hour (not to exceed 45 hours per week)
Respite	$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)	1 hour
Minor Home Adaptation	$500 per calendar year	

(2) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall submit a cost report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual cost report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a

fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual cost report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's cost report if it determines an audit is necessary. [~~Payment Amounts for HCB Waiver Covered Services Prior to July 1, 2001. (1) An HCB waiver provider providing services to an HCB recipient shall comply with the provisions established in 907 KAR 1:031 and 907 KAR 1:160.~~

~~(2) An HCB waiver provider shall be reimbursed in accordance with the reimbursement methodology established in 907 KAR 1:031 for the following HCB waiver services:~~

~~(a) Assessment;~~

~~(b) Reassessment;~~

~~(c) Case management;~~

~~(d) Homemaker; or~~

~~(e) Personal care.~~

~~(3) For a rate determined in accordance with the reimbursement methodology established in 907 KAR 1:031, the department shall apply a fixed upper limit which shall apply regardless of the length of time a provider has participated in the Medicaid Program.~~

~~(4) The fixed upper limit for an HCB waiver service shall be set:~~

~~(a) Using each HCB waiver provider's average unit cost per service which shall be:~~

~~1. Grouped by service; and~~

~~2. Arrayed from lowest to highest;~~

~~(b) Using the median per unit cost for each service array based on the median number of Medicaid units; and~~

~~(c) At 130 percent of the median cost per unit.~~

~~(5) The department shall:~~

~~(a) Use an HCB waiver provider's most recent cost report data available as of May 31 to determine the provider's rate for the next state fiscal year, which begins July 1;~~

~~(b) Update upper limits each July 1; and~~

~~(c) Except as provided in subsection (3) of this section, not apply upper limits until a provider has participated in the program for two (2) full agency fiscal years.~~

~~(6) If a provider fails to submit a cost report to the department before May 31, that provider's rates for HCB waiver services shall remain the same as those of the previous fiscal year, until receipt of an acceptable cost report.~~

~~(7) Payment for a covered respite service shall:~~

~~(a) Be limited to $2,000 per six (6) month period within a calendar year beginning January 1 through June 30 and July 1 through December 31;~~

~~(b) Not exceed $4,000 per calendar year for a period beginning January 1 through December 31;~~

~~(c) Be subject to a year-end cost settlement by the department.~~

~~1. To actual cost up to $4,000; or~~

~~2. To charges, if lower; and~~

~~(d) Be made upon receipt of a claim to the department by an HCB waiver provider pursuant to 907 KAR 1:673.~~

~~(8) Payment for a minor home adaptation to an HCB recipient's home shall:~~

~~(a) Be made on the basis of actual billed charges;~~

~~(b) Be for the actual cost of the minor home adaptation, including actual overhead cost which shall not exceed twenty (20) percent of actual cost;~~

~~(c) Not exceed a maximum of $500 per calendar year per HCB recipient beginning January 1; and~~

~~(d) Be subject to a year-end cost settlement by the department:~~

~~1. To actual cost up to $500; or~~

~~2. To charges, if lower.~~

~~(9) An attendant care service shall:~~

~~(a) Be reimbursed on a fee for service basis at the lower of reasonable cost or charge not to exceed the Medicaid upper limit of eleven (11) dollars and fifty (50) cents per unit of service;~~

~~(b) Be reported as nonreimbursable cost in an HCB waiver provider's cost report; and~~

~~(c) Not be subject to year-end cost settlement.~~

~~(10) Attendant care shall be limited to forty-five (45) hours per week and travel time for an attendant shall not be included in a unit of service.~~

~~Section 3. Audits of HCB Waiver Providers. HCB waiver cost reports shall be audited:~~

~~(1) As deemed necessary by the department; and~~

~~(2) To ensure that final payment to a provider is made in accordance with 907 KAR 1:031.~~]

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement shall.

(a) Be made:

1. Directly to an ADHC center; and

2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 120 [~~ten (10)~~] units per calendar week at each HCB recipient's initial review or recertification.

(2) Level I reimbursement shall be the lesser of the provider's usual and customary charges or two (2) dollars and fifty-seven (57) [~~thirty (30) dollars and eighty (80)~~] cents per unit of service.

(3) Level II reimbursement shall be the lesser of the provider's usual and customary charges or three (3) dollars and twelve (12) [~~thirty-seven dollars and forty (40)~~] cents per unit of service.

(4) The department shall not reimburse an ADHC center for more than twenty-four (24) [~~two (2)~~] basic units of service per day per HCB recipient.

(5) An ADHC basic daily service shall:

(a) Constitute care for one (1) HCB recipient; and

(b) Not exceed twenty-four (24) units per day.

(6) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(7) [~~(b) Be a minimum of:~~

~~1. Three (3) hours per day for one (1) unit; or~~

~~2. Two (2) hours for one (1) unit if the HCB recipient has occupied the ADHC center for two (2) hours prior to leaving the center due to a documented illness or emergency;~~

~~(c) Be a minimum of six (6) hours for two (2) units; and~~

~~(d) Not exceed two (2) units per day.~~

~~(6)~~] An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria:

(a) The ADHC center has an average daily census limited to individuals designated as:

1. HCB recipients [~~waiver~~];

2. Private pay; or

3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2) of this administrative regulation.

(8) [~~(7)~~] If an ADHC center does not meet the Level II requirements established in Section 5 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement.

(9) [~~(8)~~] To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (7)[~~(6)~~](a) of this section; and

(b) Have a minimum of eighty (80) percent of its individuals meet the definition of DD as established in Section 5(2) of this administrative regulation.

(10) [~~(9)~~] To qualify for reimbursement as an ancillary therapy, a service shall be:

(a) Medically necessary;

(b) Ordered by a physician; and

(c) Limited to:

1. Physical therapy provided by a physical therapist **or physical therapist assistant** [~~as defined in 907 KAR 1:160, Section~~

~~1(18)~~];

2. Occupational therapy provided by an occupational therapist or occupational therapist assistant [~~as defined in 907 KAR 1:160, Section 1(17)~~]; or

3. Speech therapy provided by a speech-language [~~speech~~] pathologist [~~as defined in 907 KAR 1:160, Section 1(23)~~].

(11) [~~(10)~~] Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

(12) [~~(11)~~] A respite service shall:

(a) Be provided on site in an ADHC center; and

(b) Be provided pursuant to 907 KAR 1:160.

(13) [~~(12)~~] One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(14) [~~(13)~~] The length of time an HCB recipient receives a respite service shall be documented.

(15) [~~(14)~~] A covered respite service shall be reimbursed as established in Section 7 of this administrative regulation.

Section 5. Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4 of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;

(b) A disability that is attributable to mental retardation or a related condition which shall include:

1. Cerebral palsy;
2. Epilepsy;
3. Autism; or
4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as mental retardation, which significantly limits the individual in two (2) or more of the following skill areas:

a. Communication;
b. Self-care;
c. Home-living;
d. Social skills;
e. Community use;
f. Self direction;
g. Health and safety;
h. Functional academics;
i. Leisure; or
j. Work; and

(c) An adaptive behavior limitation similar to that of a person with mental retardation, including:

1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and
2. A limitation that may not be attributable to only a physical or sensory impairment or mental illness.

Section 6. The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the QIO on the first of the month prior to the end of the current calendar quarter. If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.

(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:

(a) An ADHC center shall:

1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;

2. Submit the completed MAP-1021 form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and

3. Attach to the MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;

(b) The QIO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and

(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:

(a) Reduce the ADHC center's current rate to the Level I rate; and

(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 7. [~~Fixed Upper Payment Rate Limits. (1) Except as provided in Section 4 of this administrative regulation, the payment rate for a home and community based waiver service provided in accordance with 907 KAR 1:160 shall be the lesser of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:~~]

[~~Home and Community Based Waiver Service~~	~~Fixed Upper Payment Rate Limit~~	~~Unit of Service~~
~~Assessment~~	~~$75.00~~	~~Entire assessment process~~
~~Reassessment~~	~~$75.00~~	~~Entire reassessment process~~
~~Case Management~~	~~$15.00~~	~~15 minutes~~
~~Homemaking~~	~~$13.00~~	~~30 minutes~~
~~Personal Care~~	~~$15.00~~	~~30 minutes~~
~~Attendant Care~~	~~$11.50~~	~~1 hour (not to exceed 45 hours per week)~~
~~Respite~~	~~$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)~~	~~1 hour~~]
~~Minor Home Adaptation~~	~~$500 per calendar year~~	

[~~(2) The services listed in subsection (1) of this section shall not be subject to cost settlement by the department.~~

~~(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.~~

~~Section 8.~~] Appeal Rights. An HCB service [~~waiver~~] provider may appeal a department decision [~~decisions~~] as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;

(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;

(c) "The Home Health and Home and Community Based Cost Report", May 1991 Edition; and

(d) "The Home Health and Home and Community Based Cost Report Instructions", October 1999 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to home and community based (HCB) waiver service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to home and community based (HCB) waiver service reimbursement.

(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 provisions related to home and community based (HCB) waiver service reimbursement

(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 provisions related to home and community based (HCB) waiver service reimbursement.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that reimbursement for HCB providers who are local health departments shall be cost-based in addition to the already established fee-for-service basis as well as increases HCB assessment and reassessment reimbursement from seventy-five (75) dollars to 100 dollars. Local health department HCB providers shall receive a cost settlement if the fee schedule reimbursement resulted in payments equaling less than the entity's cost for the year. Conversely, if their reimbursement for the year exceeds cost, the Department for Medicaid Services (DMS) shall recoup any such excess. DMS employs this same practice with local health departments that provide home health care. Additionally, adult day health care (ADHC) unit length is revised to capture more accurate or detailed amounts of time. The amendment after comments inserts a definition of occupational therapist assistant and physical therapist assistant and authorizes these provider types accordingly. This amendment renders 907 KAR 1:170, Reimbursement for home and community based waiver services, consistent with companion administrative regulation 907 KAR 1:160, Home and community based waiver services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure HCB recipient access to services by strengthening local health department participation. Currently the Department for Medicaid Services (DMS) employs this same practice with local health departments that provide home health care. HCB assessment and reassessment reimbursement must be increased in order to ensure an adequate supply of providers to serve the HCB community. Additionally, adult day health care (ADHC) unit length is revised to capture more accurate or detailed amounts of time. The amendment after comments is necessary to render 907 KAR 1:170, Reimbursement for home and community based waiver services, consistent with companion administrative regulation 907 KAR 1.160, Home and community based waiver services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring an adequate supply of HCB providers. The amendment after comments conforms to the authorizing statutes by rendering 907 KAR 1:170, Reimbursement for home and community based waiver services, consistent with companion administrative regulation 907 KAR 1:160, Home and community based waiver services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring an adequate supply of HCB providers. The amendment after comments assists in the effective administration of the authorizing statutes by rendering 907 KAR 1:170, Reimbursement for home and community based waiver services, consistent with companion administrative regulation 907 KAR 1:160, Home and community based waiver services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect local health departments providing HCB services and HCB providers who perform assessments or reassessments. Occupational therapist assistants and physical therapists assistants and those who employ them will be affected by the amendment after comments.

(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 amendment alters reimbursement for local health departments and for HCB providers who perform assessments or reassessments. Local health departments must submit a cost report in order to receive cost-based reimbursement; however, they already submit cost reports to identify home health care delivered as opposed to home and community based service care. Therefore, the department foresees no additional administrative burden. HCB providers who perform assessments or reassessments are not required to take any action to receive the increased reimbursement. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services. The amendment after comments explicitly authorizes occupational therapist assistants and physical therapists assistants to provide therapy Providers will not have to take action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) This amendment does not impose a cost on regulated entities. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services. The amendment after comments explicitly authorizes occupational therapist assistants and physical therapists assistants to provide therapy; thus no cost is being imposed on the providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Local health department reimbursement will equal cost as opposed to the current methodology which may result in reimbursement falling short of cost, and HCB providers who perform assessments or reassessments will receive an increased reimbursement for those services. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services. Providers, as authorized by a companion administrative regulation, may already employ occupation therapist assistants and physical therapist assistants; however, the amendment after comments clarifies this provision.

(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 the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. DMS projects the unit length amendment to be budget neutral. DMS does not anticipate that the amendment after comments will result in additional expenditures.

(b) On a continuing basis: DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is

indeterminable and contingent upon recipient utilization of local health department HCB service provision. DMS projects the unit length amendment to be budget neutral. DMS does not anticipate that the amendment after comments will result in additional expenditures

(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 XIX of the Social Security Act and matching funds from 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 nor the amendment after comments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes that reimbursement for HCB providers that are local health departments shall be cost-based in addition to the already established fee-for-service basis; thus, if at fiscal year end a local health department's cost has exceeded its HCB fee-for-service reimbursement the local health department shall reimburse the department for the difference. The amendment after comments does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that only local health department HCB reimbursement shall be cost-based. Local health departments provide a critical safety net of HCB services and are reimbursed on a cost basis in the home health program as well. This action is necessary to ensure recipient access to HCB services. The amendment after comments does not tier.

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 will affect local health departments that provide HCB service and HCB providers who perform assessments or reassessments. The amendment after comments has no impact.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A 030(2), 194A.050(1) and 205.520(3).

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? DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. The amendment after comments has no impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. The amendment after comments has no impact.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. The amendment after comments has no impact.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. The amendment after comments has no impact.

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 Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:672. Provider enrollment, disclosure, and documentation for Medicaid participation.

RELATES TO: KRS 205.520, 205.8451(2),(7),(8),(9), 205.8477, 304.17A-545(5), 311.621-311.643, 42 U.S.C. 1396a(w), 42 C.F.R. 455.100-455.106, Ky. Acts ch. 34

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(12), 42 U.S.C. 1396a, b, c[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes [~~empowers~~] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560(12) requires the Medical Assistance Program to use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program. Ky. Acts ch. 34 (SB 98 2007 GA) requires the department to develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program. The administrative regulation establishes provisions related [~~sets forth the provisions relating~~] to Medicaid provider enrollment, disclosure, [~~and~~] documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

Section 1. Definitions. (1) "Applicant" means a person or entity who applies for enrollment as a participating [~~submits an application to become a~~] Medicaid provider.

(2) [~~"Application" means the completion and submission of a Medicaid provider agreement and any required addendum specific to a provider type, which is the contract between the provider and the department for the provision of Medicaid services.~~

~~(3)~~] "Cabinet" means the Cabinet for Health and Family Services.

(3) [~~(4)~~] "Claim" means a [~~any~~] request for payment under the Medicaid Program that:

(a) Relates to each individual billing submitted by a provider to the department;

(b) [~~which~~] Details services rendered to a recipient on a specific date; and

(c) [~~date(s). The claim~~] May be [~~either~~] a line item of service or all services for one (1) recipient on a bill.

(4) "Credentialed provider" means a provider that is required to complete the credentialing process in accordance with KRS 205.560(12) and Ky. Acts ch. 34 and includes the following indi-

viduals who apply for enrollment in the Medicaid Program:

(a) A dentist;

(b) A physician;

(c) An audiologist;

(d) A certified registered nurse anesthetist;

(e) An optometrist;

(f) An advance registered nurse practitioner;

(g) A podiatrist;

(h) A chiropractor; or

(i) A physician assistant.

(5) "Department" means the Department for Medicaid Services or its designated agent [~~and its designated agents~~].

(6) [~~"Disclosing entity" means a Medicaid provider or the fiscal agent for the department.~~

~~(7)~~] "Disclosure" means the provision of information required by 42 C.F.R. 455.100 through 455.106 [~~in accordance with the requirements shown in 42 C.F.R. 455, Subpart B~~].

(7)[~~(8)~~] "Exclusion" means **as defined in 42 C.F.R. 1003.101.** [~~the termination of a provider's participation in the Medicaid Program or the denial of a provider's enrollment in the Medicaid Program.~~]

(8) "Evaluation" or "credentialing" means:

(a) A process for collecting and verifying professional qualifications of a health care provider;

(b) An assessment of whether a health care provider meets specified criteria relating to professional competence and conduct; and

(c) A process to be completed before a health care provider may participate in the Medicaid Program on an initial or ongoing basis.

(9) "Furnish" means to provide medical care, services, or supplies that are:

(a) Provided directly by a provider;

(b) Provided under the supervision of a provider; or

(c) Prescribed by a provider.

(10) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over or conducts the day-to-day operation of an institution, entity, organization, or agency.

(11) "Medically necessary" or "medical necessity" means a covered benefit is:

(a) Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(b) Appropriate in terms of the service, amount, scope, and duration based on generally accepted standards of good medical practice;

(c) Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;

(d) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(e) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard;

(f) Provided in accordance with Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for individuals under twenty-one (21) years of age; and

(g) Provided in accordance with 42 C.F.R. 440.230.

(12) "Noncredentialed provider" means a provider that is not required to complete the credentialing process in accordance with KRS 205.560(12) and includes any individual or entity not identified in subsection (4) of this section.

(13) "Provider" is defined by KRS 205.8451(7).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "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 services.

(16) [~~as defined in 907 KAR 1:671.~~

~~(9) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.~~

~~(10) "Furnish" means as defined in 907 KAR 1:671.~~

~~(11) "Managing employee" means as defined in 907 KAR 1:671.~~

~~(12) "Provider" means as defined by KRS 205.8451.~~

~~(13) "Recipient" means as defined by KRS 205.8451.~~

~~(14)~~] "Services" means medical care, services, or supplies provided to a Medicaid recipient [~~recipients~~].

(17) "Subcontractor" means an individual, agency, entity, or organization to which a Medicaid provider or the department's fiscal agent has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Entered into a contract, agreement, purchase order, or lease, including lease of real property, to obtain space, supplies, equipment, or nonmedical services associated with providing services and supplies that are covered under the Medicaid Program.

(18) "Terminated" means a provider's participation in the Medicaid Program has ended and a contractual relationship no longer exists between the provider and the department for the provision of Medicaid-covered services to eligible recipients by the provider or its subcontractor.

(19) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451(2) or (8), or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, a person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, a false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of an event that affects the right of a provider to receive payment and concealing or failing to disclose the event or other material omission with the intention that a payment be made or the payment is made in a greater amount than otherwise owed;

(d) Conversion;

(e) Soliciting or accepting bribes or kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements established in 907 KAR 1:673, Section 2;

(g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program;

(h) Seeking or accepting additional payments, for example, gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for covered medical care, services, or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect a fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program, except for required copayments or recipient liability, if any, required by the Medicaid Program;

(j) Engaging in conspiracy, complicity, or criminal syndication;

(k) Furnishing medical care, services, or supplies that fail to meet professionally recognized standards, or which are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B and failing to correct the deficiencies or violation as reported to the department by the Office of Inspector General, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Discriminating in the furnishing of medical care, services, or supplies as prohibited by 42 U.S.C. 2000d;

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 C.F.R. 447.10;

(n) Offering or providing a premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; or

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

[~~(15) "Subcontractor" means as defined in 907 KAR 1:671.~~

~~(16) "Terminated" means as defined in 907 KAR 1:671.~~

~~(17) "Unacceptable practice(s)" means as defined in 907 KAR 1:671.~~]

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract only with an individual or entity **who meets** [~~capable of demonstrating its ability to meet~~] the conditions of Medicaid provider participation [~~only those providers or entities who can demonstrate that they are qualified~~] in accordance with 907 KAR 1:671 [~~as determined by the department to participate as a provider~~].

(b) The department reserves the right to contract or not contract with any potential provider.

(c) An individual or entity that wishes to participate:

1. [~~(b) All providers or entities who wish to participate~~] in the Medicaid Program shall be enrolled as a participating provider [~~participating providers~~] prior to being eligible to receive reimbursement in accordance with federal and state laws; and

2. As a KenPAC primary care provider shall meet the provider participation criteria set forth in 907 KAR 1.320, Kentucky Patient Access and Care System (KenPAC).

(2) To apply for enrollment in the Medicaid Program as a non-credentialed provider, an individual or entity shall submit:

(a) A completed MAP-811, Non-Credentialed Provider Application, and

(b) Proof of a valid professional license, registration, or certificate that allows the:

1. Individual to provide services within the individual's scope of practice; or

2. Entity to operate or provide services within the entity's scope of practice.

(3) To apply for enrollment in the Medicaid Program as a credentialed provider, an individual shall submit:

(a) A completed MAP-811, Individual Provider Application;

(b) Proof of a valid professional license, registration, or certificate that allows the individual to provide services within the individual's scope of practice; and

(c)1. Except for a dentist, a completed KAPER-1, Kentucky Application for Provider Evaluation and Re-evaluation; and

2. If licensed to practice as a dentist, a completed Dental Credentialing Form; or

3. Pursuant to 806 KAR 17:480, Section 2(4), and in lieu of the KAPER-1, the provider application form of the Council for Affordable Quality Healthcare.

(4)(a) **Within forty-five (45) days of receipt of a required credentialing form, the department shall notify the health care provider or entity applying for enrollment in the Medicaid Program of any omitted information or questionable information included on the form.**

(b) If the applicant does not respond within the time period specified in the department's notice of omitted or questionable information, the department shall deny enrollment unless an extension of time is requested by the provider and granted by the department. [~~New enrollments. Any provider or entity interested in participating as a Medicaid provider shall be required to submit an application for enrollment in accordance with this section.~~

~~(3) Enrolled providers. Upon receiving notice from the department, all existing providers or entities enrolled as participating providers in the Medicaid Program shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.~~

~~(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.~~

~~(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days from the date of the notice shall result in termination of participation.~~

~~(c) Submission of the application within thirty-five (35) days from the date of the notice shall permit the continuation of the existing provider participation until the application for enrollment the Medicaid Program has been approved or denied and notice has been sent to the provider.~~

~~(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and reenroll providers, if necessary, for effective management of the Medicaid Program.~~

~~(4) Application for enrollment as a participating provider shall be processed in the following manner:~~

~~(a) All applicants for participation shall complete and sign a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity, pursuant to 31 U.S.C. 1352, provide proof of a valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application.~~

~~(b)~~] [~~The department may require~~] [~~any~~] [~~additional clarifying information from an individual or entity that applies for enrollment in the Medicaid Program as a participating provider~~] [~~the applicant with regard to qualifications for participation~~].

[~~(b) If the applicant does not respond within the time period specified in the department's request for additional clarifying information, the department may deny enrollment~~] [~~application for participation may be denied~~] [~~unless an extension of time is requested by the provider and granted by the department.~~]

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards established in [~~as promulgated under~~] KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d)1. The department shall [~~complete its application review and~~] make an enrollment determination within ninety (90) days of [~~after~~] receipt of:

a. The completed application documents described in subsection (2) or (3) of this section; and

b. Any additional information requested by the department.

2. The department may take additional time beyond ninety (90) days to render a decision if [~~for the decision when~~] necessary for resolution of an issue or dispute [~~issues or disputes~~].

3. If additional time is needed to render a decision, the department shall notify the applicant that a decision will be issued after the ninety (90) day timeframe described in subparagraph 1. [~~However, notice shall be sent to the applicant in those matters requiring additional time to process.~~]

(5) Approval of enrollment in the Medicaid Program as a participating provider [~~an application~~].

(a) Upon approval of enrollment, the department shall issue a provider number that shall be used by the provider solely [~~an application, the provider shall be issued an identifying number, known as a provider number, which shall be used exclusively by the provider~~] for billing and identification purposes.

(b) A provider's participation shall begin and end on the dates specified in the notification of approval for [~~of~~] program participation, unless the provider's [~~provider~~] participation is [~~otherwise~~] terminated in accordance with this administrative regulation, 907 KAR 1:671, or other applicable state or federal laws.

(6) By enrolling in the Medicaid Program, a provider, the provider's [~~, the provider, its~~] officers, directors, agents, employees, and subcontractors agree to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Provide [~~Furnish~~], upon request, all information regarding the nature and extent of services and claims [~~for payment~~] submitted by, or on behalf of[~~,~~] the provider, to the:

1. [~~The~~] Cabinet; [~~for Health and Family Services,~~]

2. [~~The~~] Department,

3. [~~The~~] Attorney General;

4. [~~The~~] Auditor of Public Accounts;

5. [~~The~~] Secretary of the United States Department of Health and Human Services; or [~~and~~]

6. [~~The~~] Office of the United States Attorney;

(c) Comply with the disclosure requirements established in [~~of~~]

Section 3 of this administrative regulation;

(d) Comply with the applicable advance directive [directives] requirements established in [of] 42 U.S.C. 1396a(w) regarding [with regard to] the right to accept or reject life-saving medical procedures as described in KRS 311.621 - 311.643 [et seq];

(e) Accept payment from Medicaid as payment in full for all care, services, benefits, or [and] and supplies billed to the Medicaid Program, except with regard to recipient cost-sharing charges [copayments] and beneficiary liability, if any;

(f) Submit claims for payment only for care, services, benefits, or [and] supplies;

1. Actually furnished to eligible recipients; [beneficiaries] and

2. Medically necessary or otherwise authorized by law;

(g) Provide true, accurate, and complete information in relation to any claim for payment;

(h)1. Permit review or audit of all books or records or, at the discretion of the auditing agency, a sample of books or records related [thereof, relating] to services furnished and payments received from [under] Medicaid, including recipient histories, case files, and recipient specific data [as listed below]

2. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage.[.]

(i) Not engage in any activity that [which] would constitute an unacceptable practice;

(j) Comply with all terms and provisions contained in the application documents described in subsection (2) or (3) of this section; [provider agreement; and]

(k) Comply with all applicable federal laws, [and] state statutes, and state administrative regulations related to the applicant's [relating to their] provider type and provision of services under the Medicaid Program; and

(l) Bill third party payors in accordance with Medicaid statutes and administrative regulations.

(7) Denial of enrollment or reenrollment in the Medicaid Program [an application for participation].

(a) The department shall deny enrollment if an applicant meets one (1) of the following conditions [Reasons for denial of application for participation shall include the following factors]:

1. Falsely represents, omits, or fails [Any false representation, omission, or failure] to disclose of any material fact in making an application for enrollments in accordance with subsection (2) or (3) of this section;

2. Is currently suspended, excluded, terminated, or involuntarily withdrawn from participation [Any suspension, exclusion, termination, or involuntary withdrawal from participation currently in effect] in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Falsely represents, omits, or fails to disclose any material of fact in making [Any false representation or omission of] an application for a [any] license, permit, certificate, or registration related to a health care profession or business;

4. Has failed [Any previous failure] to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from:

a. The department; or

b. A state or federal licensing, certifying, or auditing agency;

5. Is under [A] current investigation, indictment or conviction for fraud and abuse or unacceptable practice in:

a. The Kentucky Medicaid Program;

b. Another state's Medicaid Program;

c. [in Kentucky or any other state,] The Medicare Program,[,] or

d. [any] Other publicly funded health care program;

6. Fails [Failure] to comply with any Medicaid policy as specified in the Kentucky statutes or department's administrative regulations; [of the department, or]

7. Fails [Failure] to pay any outstanding debt owed to the department; or

8. Has engaged in an activity that would constitute an unacceptable practice.

(b) If enrollment or reenrollment [an application] is denied, the department shall consider reapplication only:

1. If the applicant corrects each deficiency that led to the denial; and

2. After the expiration of a period of exclusion imposed in accordance with 907 KAR 1:671, if applicable. [applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed in accordance with 907 KAR 1:671.]

(c) Notice of denial of enrollment or reenrollment. The department shall send [A] written notice of [the] denial to an [shall be mailed to the] applicant's last known address and provide [contain the following:

1.] the reason for the denial.[, and

2. The date in which the applicant may reapply for enrollment.]

(d) The denial shall be effective upon the date of the written notice.

(8)1. A provider may request limited enrollment for a period of time, not to exceed thirty (30) days, in an exceptional situation for emergency services provided to an eligible recipient [beneficiary].

2. The department shall make an enrollment determination regarding [of] the exceptional circumstances and notify the provider in writing of its decision.

(9) Recredentialing. A credentialed provider currently enrolled in the Medicaid Program shall submit to the department's recredentialing process three (3) years from the date of the provider's initial evaluation or last reevaluation.

Section 3. Required Provider Disclosure. (1) A provider [Providers and the fiscal agent] shall comply with the disclosure of information requirements contained in 42 C.F.R. 455.100 through 455.106 [455 Subpart B] and KRS 205.8477.

(2) Time and manner of disclosure. Information disclosed in accordance with 42 C.F.R. 455.100 through 455.106 [(a) The required provider information specified in 42 C.F.R. 455, Subpart B] shall be provided:

(a) [1.] Upon application for enrollment;

(b) [2.] Annually thereafter; and

(c) [3.] Within thirty-five (35) days of a written [the] request by the department or the United States Department of Health and Human Services

[(b) The disclosure requirement may coincide with the certification or recertification periods except when the provider is certified other than on an annual basis.]

(3) If a [the] provider [or fiscal agent] fails to disclose [required] information required by 42 C.F.R. 455.100 through 455.106 within thirty-five (35) days of the department's written request [the time period specified], the department shall terminate the provider's [provider shall be terminated from] participation in the Medicaid Program in accordance with 907 KAR 1:671, Section 6 on the day following the last day for submittal of the required information [in accordance with 907 KAR 1:671].

(4)(a) A [The] provider shall file an amended, signed ownership and disclosure form with the department within thirty-five (35) days following a change in [from the change in the following]:

1. [(a)] Ownership or control;

2. [(b)] The managing employee or management company; or

3. [(c)] A provider's federal tax identification number.

(b) [(5)] Failure to comply with the requirements of paragraph (a) of this subsection may result in termination from the Medicaid Program.

Section 4. Required Provider Documentation. (1) A [Each] provider shall maintain documentation of:

(a) Care, services, benefits, or supplies provided to an eligible recipient [beneficiary];

(b) The recipient's medical record or other provider file, as appropriate, which shall demonstrate that the care, services, benefits, or supplies [billed] for which the provider submitted a claim[,] were actually performed or delivered;

(c) The diagnostic condition necessitating the service performed or supplies provided; and

(d) Medical necessity as substantiated by appropriate documentation including an appropriate medical order.

(2) A provider who is reimbursed using a cost-based method shall maintain all:

(a) Fiscal and statistical records and reports [which are] used for the purpose of establishing rates of payment made in accor-

dance with Medicaid policy,[;] and

(b) [all] Underlying books, records, documentation and reports that [which] formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes, if any.

(4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records [has been] started before [the] expiration of the five (5) year retention period, the records shall be retained until the latter of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period

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

(1) "Kentucky Application for Provider Evaluation and Re-evaluation, Form KAPER-1", December 2005 edition.

(2) "MAP-811, Non-credentialed Provider Application", July 2007 edition

(3) "MAP-811, Individual Provider Application", July 2007 edition.

(4) "Dental Credentialing Form", July 2007 edition.

(5) The material incorporated by reference may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m

SHAWN CROUCH, Commissioner
MARK BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid 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 provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid 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: Pursuant to KRS 205 560(12), this amendment implements use of the form and guidelines required by KRS 304.17A-545(5) and 806 KAR 17:480 for assessing the credentials of those applying for participation in the Medicaid program. Pursuant to Ky. Acts Chapter 34 (SB 98 from the 2007 Session of the General Assembly), this amendment establishes a specific form for assessing the credentials of dentists applying for participation in the Medicaid program. The amendment after comments replaces the prior definition of exclusion with the federal definition, clarifies that the Department for Medicaid Services will only contract with an individual or entity who meets Medicaid provider participation requirements pursuant to 907 KAR 1:671 rather than simply demonstrates a capability of meeting such requirements, and in response to public comment establishes a timeframe for DMS to notify an applicant of omitted or questionable information provided by the applicant. Additionally, the department is adding "CAQH #" to the information required on the Dental Credentialing Form. The department recognizes Council for Affordable Quality Health Care (CAQH) credentialing and is inserting a line on which dental providers can designate their CAQH number. The department anticipates that this option would expedite credentialing and reduce providers' administrative burden associated with credentialing. The KAPER-1 already contains such an option for other provider types.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 205.560(12), KRS 304.17A-545(5), and 806 KAR 17:480 in recognizing a uniform provider credentialing and application process. This amendment is also required by Ky. Acts Chapter 34 (SB 98 from the 2007 Session of the General Assembly) to establish a specific form for assessing the credentials of dentists applying for participation in the Medicaid program. The department does not want to punish a provider for offering charity care. The amendment after comments replaces the prior definition of exclusion with the federal definition which is a more appropriate definition. The amendment after comments also clarifies that the Department for Medicaid Services will only contract with an individual or entity who meets Medicaid provider participation requirements pursuant to 907 KAR 1:671 rather than simply demonstrates a capability of meeting such requirements. This amendment is necessary to ensure that only qualified providers are enrolled. The amendment after comments, in response to public comment, establishes a timeframe for DMS to notify an applicant of omitted or questionable information provided by the applicant. This action promotes the timely processing of an application as well as emphasizes that pending information is confined to information required that was omitted or was questionable. Additionally, the department is adding "CAQH #" to the information required on the Dental Credentialing Form. The department recognizes Council for Affordable Quality Health Care (CAQH) credentialing and is inserting a line on which dental providers can designate their CAQH number. The department anticipates that this option would expedite credentialing and reduce providers' administrative burden associated with credentialing. The KAPER-1 already contains such an option for other provider types.

(c) How the amendment conforms to the content of the authorizing statutes: The initial amendment and the amendment after comments conform to the content of the authorizing statutes by complying with KRS 205.560(12), KRS 304.17A-545(5), 806 KAR 17:480, and Ky. Acts Chapter 34 (SB 98 from the 2007 Session of the General Assembly) in recognizing a uniform provider credentialing and application process.

(d) How the amendment will assist in the effective administration of the statutes: The initial amendment and the amendment after comments assist in the effective administration of the statutes by complying with KRS 205.560(12), KRS 304.17A-545(5), 806 KAR 17:480, and Ky. Acts Chapter 34 (SB 98 from the 2007 Session of the General Assembly) in recognizing a uniform provider credentialing and application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any entity desiring to be a Medicaid provider 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: Entities applying for enrollment as a Medicaid provider shall be required to submit a KAPER-1 form in addition to a MAP-811. Dentists applying for participation as a Medicaid provider shall be required to submit a "Dental Credentialing" form in addition to a MAP-811. The amendment after comments allows providers to indicate a CAQH number, if applicable, to expedite credentialing and requires providers to meet Medicaid participation requirements pursuant to 907 KAR 1:671 in order to be enrolled.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An entity that applies for enrollment as a Medicaid provider would experience no significant costs associated with completing the required KAPER-1 or Dental Credentialing form. The amendment after comments mandates that providers meet Medicaid participation requirements pursuant to 907 KAR 1.671 in order to be enrolled.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with this amendment will be eligible to receive Medicaid reimbursement if approved as participating providers. In addition, because this amendment complies with the provisions of SB 98 from the 2007 Session of the General Assembly, dentists benefit from the Cabinet's development of the new "Dental Credentialing Form", a form used in lieu of the KAPER-1 to streamline the process for assessing the credentials of dentists. The amendment after comments allows dental providers to indicate a CAQH number, if applicable, to expedite credentialing and establishes a timeframe for DMS to notify an applicant of omitted or questionable information provided by the applicant. The latter action promotes the timely processing of an application as well as emphasizes that pending information is confined to information required that was omitted or was questionable.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no fiscal impact as a result of the initial amendment or amendment after comments to this administrative regulation.

(b) On a continuing basis: DMS anticipates no fiscal impact as a result of the initial amendment or amendment after comments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX of the Social Security Act and state matching funds from 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: No increase in fees or funding is necessary to implement the amendment or amendment after comments to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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 and amendment after comments will affect each applicant for participation as a credentialed provider in the Medicaid program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205 560(12), which provides that the Medicaid program use the form and guidelines established by KRS 304.17A-545(5) and 806 KAR 17.480 for assessing the credentials of those applying for participation in the Medicaid program. This amendment is further required by Ky. Acts Chapter 34 (SB 98 from the 2007 Session of the General Assembly) which requires that the Medicaid program develop a specific form and guidelines for assessing the credentials of dentists applying for participation in the Medicaid program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment and amendment after comments will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment and amendment after comments will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment and amendment after comments will not result in any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment and amendment after comments will not result in any additional costs during 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: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 42 C.F.R. 440.50, 447 Subpart B, 42 U S C. 1396a, b, c, d, s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205 520(3), 205.560

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 citizenry. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code which may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

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

(6) "Established patient" means one who has received professional services from the provider within the past three (3) year period.

(7) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(8) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires few additional physician resources; or

(b) Is clinically integral to the performance of the primary procedure.

(9) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(10) "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(11) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(12) "Medicaid Physician Fee Schedule" means a list of current reimbursement rates for physician services established by the department in accordance with Section 3 of this administrative regulation.

(13) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(14) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(15) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(16) "Physician assistant" is defined in KRS 311.840(3).

(17) "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

(18) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(19) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code which takes into consideration the physician's work, practice expense and liability insurance.

(20) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(21) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(22) "Usual and customary charge" means the uniform amount which a physician charges the general public for a specific medical procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician; or

(b) A physician group practice enrolled in the Kentucky Medicaid Program.

(2) Except as provided in subsections (3) to (9) [~~(8)~~] of this section, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with Section 3 of this administrative regulation.

(3) If there is not an established fee in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

(4) Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1.006, Section 3.

(5) If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907 KAR 1:604 shall apply.

(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as follows:

(a) A second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(b) A professional component of a service reported by the addition of the two (2) digit modifier twenty-six (26) shall be reimbursed at the product of:

1. The Medicare value assigned to the physician's work; and

2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(c) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

1. The Medicare value assigned to the practice expense involved in the performance of the procedure; and

2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(d) A bilateral procedure reported by the addition of the two (2) digit modifier fifty (50) shall be reimbursed at 150 percent of the amount assigned to the CPT code;

(e) An assistant surgeon procedure reported by the addition of the two (2) digit modifier eighty (80) shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon;

(f) A procedure performed by a physician acting as a locum tenens for a Medicaid-participating physician reported by the addition of the two (2) character modifier Q six (6) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(g) An evaluation and management telehealth consultation service provided by a consulting medical specialist in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code; and

(h) A level II National HCPCS modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

(7) Except for a service specified in paragraphs (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:029.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital or emergency room visit or in addition to a laboratory test.

(8) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital or emergency room visit if performed by the same provider.

(9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit **beginning** [~~occurring~~] after 5 p.m. Monday through Friday or **beginning** [~~occurring~~] after 12 p.m. on Saturday or anytime Sunday.

Section 3. Reimbursement Methodology. (1) Except for [~~With the exception of~~] a service specified in subsections (3) through (7) [~~(6)~~] of this section:

(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b)1. The flat rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of [actual] [~~average~~] [~~amount of time~~] units spent on that specific procedure (designated as Z).

2. A unit shall equal a fifteen (15) minute increment of time.

[~~1. The average time units shall be a static number based upon average time units obtained by the department.~~

~~2. The formula for obtaining a covered anesthesia service's flat rate shall be X multiplied by (Y plus Z).~~

~~3. The flat rate for a covered anesthesia service shall not exceed the rate that was in effect on June 1, 2006 by more than twenty (20) percent.~~]

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) [~~Fourteen (14) dollars and eighty-five (85)~~] [~~Thirteen (13) dollars and eighty-six (86)~~] cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.

(3) For the following services, reimbursement shall be the lesser of:

(a) The actual billed charge;

(b) A fixed fee of three (3) dollars and thirty (30) cents for:

1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or

2. Administration of a flu vaccine;

(c) For delivery-related anesthesia services, a fixed rate described as follows:

1. Vaginal delivery, $215 [~~$200~~];

2. Cesarean section, $335 [~~$320~~];

3. Neuroxial labor anesthesia for a vaginal delivery or cesarean section, $350 [~~$335~~];

4. Additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;

5. Additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia shall be twenty-five (25) dollars; or

(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on services provided to a recipient under age one (1) and over age seventy (70).

(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse the following drugs [~~A covered drug specified in 907 KAR 3:005, Section 4(4)(a) through (i) shall be reimbursed~~] at the lesser of the[~~:(a)~~] actual billed charge[;] or [~~(b)~~] average wholesale price (AWP) minus ten (10) percent if the drug is administered in a physician's office.

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is:

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine; and

c. Requires special handling, storage, shipping, dosing or administration.

(5) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement at the same rate it reimburses for these drugs provided to a Medicaid recipient, except that the department shall reduce reimbursement by the amount of the third party obligation.

(6) [~~(5)~~] Reimbursement for a covered service provided by a physician assistant shall be:

(a) Made to the employing physician; or

(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(7)[~~(6)~~](a) Except for an item identified in paragraph (b) or (c) of this subsection, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.

(b) Except as established in paragraph (c) of this subsection, the department shall reimburse the following drugs at the lesser of the actual billed charge or average wholesale price (AWP) minus ten (10) percent if the drug is administered in a physician's office by a physician assistant:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is:

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine; and

c. Requires special handling, storage, shipping, dosing or administration.

(c) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician assistant employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement at the same rate it reimburses for these drugs provided to a Medicaid recipient, except that the department shall reduce reimbursement by the amount of the third party obligation. [~~If provided by a physician assistant, an injectable antibiotic, antineoplastic chemotherapy agent or a contraceptive identified in 907 KAR 3:005, Section 4(4)(a) through (i), shall be reimbursed at the lesser of the:~~

~~1. Actual billed charge; or~~

~~2. Average wholesale price (AWP) of the drug minus ten (10) percent.~~]

Section 4. Reimbursement Limitations. (1)(a) With the exception of chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 [~~representing medical decision making of moderate or high complexity for an established patient~~] shall be limited to two (2) [~~one (1) evaluation and management service of either moderate complexity or high complexity~~] per recipient[~~, per diagnosis,~~] per twelve (12) months.

(b) An additional evaluation and management service referenced in paragraph (a) of this subsection shall be covered if prior authorized by the department.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of this limit shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the anesthe-

sia or surgery;

(d) Postoperative pain management;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance by epidural or spinal injection for the control of chronic pain shall be limited to three (3) injections per six (6) month period per recipient.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service;

(c) A postoperative service and follow-up care within:

1. Ninety (90) days following the date of major surgery; or

2. Ten (10) days following the date of minor surgery; and

(d) A preoperative consultation performed within two (2) days of the date of the surgery.

(5) Reimbursement for the application of a cast or splint shall be limited to two (2) per ninety (90) day period for the same injury or condition.

(6) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

(b) The initial cast or splint applied during or following the surgical procedure; and

(c) A replacement cast or splint needed as a result of the surgical procedure if:

1. Provided within ninety (90) days of the procedure by the same physician; and

2. Applied for the same injury or condition.

(7) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(8) When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician.

Section 5. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 4 of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician employed by a state-supported school of medicine that is part of a university health care system that includes a:

(a) Teaching hospital; and

(b) Pediatric teaching hospital.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall not exceed the physician's charge for the service provided and shall be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 6. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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

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

SHAWN CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 3, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A 050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement criteria for payment of medically necessary physician services to eligible Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes reimbursement for physician office visit care beyond typical working hours – extended hour rate is effective Monday through Friday 5:00 pm and weekends; increases evaluation and management service coverage from one (1) per recipient per year to two (2) per recipient per year with additional coverage contingent upon department prior authorization; inserts actual units of time into anesthesiology reimbursement as opposed to an average as was previously used; establishes reimbursement for administration of a long acting injectable nspendone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires special handling, storage, shipping, dosing or information, increases delivery-related anesthesia reimbursement; and increases the dollar conversion factor for nondelivery related anesthesia from thirteen (13) dollars and eight-six (86) cents to fifteen (15) dollars and twenty (20) cents. The amendment after comments corrects a prior mistake by increasing the dollar conversion factor from fourteen (14) dollars and eighty-five (85) cents to fifteen (15) dollars and twenty (20) cents; clarifies that the extended hour rate is for visits beginning after 5:00 pm on weekdays or beginning after noon on Saturday and clarifies that a unit of anesthesiology time shall equal fifteen (15) minutes. The extended hour clarification is necessary as it had been questioned whether a visit beginning prior to 5:00 pm but extending beyond 5:00 pm qualifies for the extended hour rate. The intent of the extended hour rate is to promote care beginning after 5 00 pm in order to curb emergency room utilization.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's reimbursement/coverage structure, to promote care delivered in a physician's office versus an emergency room setting and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

The amendment after comments corrects a prior mistake by increasing the dollar conversion factor from fourteen (14) dollars and eighty-five (85) cents to fifteen (15) dollars and twenty (20) cents as well as clarifies that the extended hour rate is for visits beginning after 5.00 pm on weekdays or beginning after noon on Saturday. The extended hour clarification is necessary as it had been questioned whether a visit beginning prior to 5:00 pm but extending beyond 5:00 pm qualifies for the extended hour rate. The intent of the extended hour rate is to promote care beginning after 5:00 pm in order to curb emergency room utilization.

(c) How the amendment conforms to the content of the authorizing statutes: The initial amendment and amendment after comments establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The initial amendment and amendment after comments establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid program (approximately 15,000).

(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: Rather than introducing mandates on providers, the amendments favor providers, enabling them to receive a flat rate for providing care beyond normal office hours, for administering certain drugs and biologicals which require special handling or similar, will be reimbursed for actual units of time for anesthesiology and for two, (2) as opposed to one (1) evaluation and management service per recipient per year and will receive increased reimbursement for anesthesia services. No actions are necessary as a result of the amendment after comments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers will receive an enhanced reimbursement for care provided beyond normal office hours, will be able to receive reimbursement for two (2) rather than one (1) evaluation and management service per recipient per year, will be reimbursed for administration of drugs or biologicals requiring special handling or similar, will be reimbursed for actual units of anesthesia service time, and will receive increased reimbursement for anesthesia services. The amendments enhance provider reimbursement rather than cost providers. No cost is generated as a result of the amendment after comments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments enhance provider reimbursement rather than cost providers. The amendment after comments increases reimbursement even more than the prior version of the administrative regulation as the prior version contained an erroneous dollar conversion factor.

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

(a) Initially: The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually. The amendment after comments does not alter the fiscal impact as the higher dollar conversion factor was already accounted for (but mistakenly stated) in the initial filing of the administrative regulation.

(b) On a continuing basis. The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually. The amendment after comments does not alter the fiscal impact as the higher dollar conversion factor was already accounted for (but mistakenly stated) in the initial filing of the administrative regulation.

(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 the Social Security Act, Title XIX 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was 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 will affect all physicians enrolled in the Medicaid program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

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

local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

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: No additional expenditures are necessary to implement this amendment.

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

907 KAR 3:090. Acquired brain injury services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, b, d, n

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

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. Therefore, this administrative regulation also implements a consumer-directed option program pursuant to KRS 205.5606.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(4) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma,

(b) Damage from anoxia or a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

(5) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351;

(b) Submitted to the department;

1. For a level of care determination; and

2. No less than every twelve (12) months thereafter. [~~"Assessment of needs and plan of care" means a written assessment and individualized plan submitted on a MAP-011 form that is developed by:~~

~~(a) An ABI recipient and legal representative if appointed,~~

~~(b) A case manager;~~

~~(c) An ABI service provider, and~~

~~(d) Others as designated by the ABI recipient.~~]

(6) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(7) "BISB" [~~"BISU"~~] or "brain injury service branch[~~unit~~]" means the brain injury service branch [~~unit in the Division of Mental Health, Department for Mental Health and Mental Retardation~~].

(8) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(9) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(10) "Budget allowance" is defined by KRS 205.5605(1).

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's [~~assessment of needs and~~] plan of care.

(12) "Consumer" is defined by KRS 205.5605(2).

(13) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(14) "Covered services and supports" is defined by KRS 205.5605(3).

(15)[~~(9)~~] "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(16)[~~(10)~~] "DCBS" means the Department for Community Based Services.

(17)[~~(11)~~] "Department" means the Department for Medicaid Services or its designee.

(18)[~~(12) "DMHMR" means the Department for Mental Health and Mental Retardation Services.~~

~~(13)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(19)[(14)] "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(20)[(15)] "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI's recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(21) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

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

(23) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335 300(2).

(24)[(17)] "Occupational therapist" is defined by [means an individual who is licensed in accordance with] KRS 319A.010(3).

(25) "Occupational therapy assistant" is defined by KRS 319A 010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(27)[(18)] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(28)[(19)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(29)[(20)] "Qualified mental health professional" is defined by [means a qualified mental health professional as defined in] KRS 202A.011(12).

(30) "Representative" is defined by KRS 205.5605(6).

(31)[(21)] "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(32) "Support broker" means an individual designated by the department to

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO

(33) "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(34)[(22)] "Transition plan" means a plan that is developed to aid an ABI recipient in exiting [transitioning] from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall.

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1.671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions;

(b) Be certified by the department prior to the initiation of the service;

(c) Be recertified at least annually by the department; and

(d) Have an office within the Commonwealth of Kentucky.

(2) An ABI provider shall comply with:

(a) 907 KAR 1.672, Provider enrollment, disclosure, and documentation for Medicaid participation;

(b) 907 KAR 1:673, Claims processing; and

(c) 902 KAR 20:078, Operations and services; group homes

(3) An ABI provider shall have a governing body that shall be:

(a) [Be] a legally-constituted entity within the Commonwealth of Kentucky; and

(b) [Be] responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an ABI recipient for whom the ABI provider [they] cannot meet the service needs; and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. 1320d to 1320d-8.

(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's [recipient] funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which the rights may [they can] be exercised, including [which shall include]:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions [including clothing, and][personal spending money] [and cigarettes]; and

3. For a residential, personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system; and

(c) [Establishing a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in rights is-

~~sues;~~

~~2. Review and approve each assessment of need and plan of care with rights restrictions at a minimum of every six (6) months; and~~

~~3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain rights restrictions;~~

~~(d) Establishing a behavior intervention committee which shall:~~

~~1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan,~~

~~2. Be separate from the human rights committee; and~~

~~3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain rights restrictions; and~~

~~(e)~~] Complying with the Americans with Disabilities Act (28 C.F.R. Part 35).

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:

(a) [~~The~~] Department;

(b) [~~DMHMR or its designee,~~

~~(c) The~~] ABI recipient's selected case manager;

(c)[~~(d) The Commonwealth of Kentucky,~~] Cabinet for Health and Family Services, Office of Inspector General or its designee;

(d)[~~(e) The United States~~] General Accounting Office or its designee;

(e)[~~(f) The Commonwealth of Kentucky,~~] Office of the Auditor of Public Accounts or its designee;

(f)[~~(g) The Commonwealth of Kentucky,~~] Office of the Attorney General or its designee; or

(g)[~~(h) The~~] Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines in between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol and abbreviations used in making a record entry;

(d) Contain the following specific information:

1. The ABI recipient's name, Social Security number and Medical Assistance [~~Medicaid~~] Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The [~~assessment of needs and~~] plan of care, MAP-109,

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. [~~Original and~~] Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information as provided by law;

(f) Be secured against [~~Have the safety from~~] loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:

(a)1. Ensure that each staff person and volunteer performing direct care or a supervisory function[~~, prior to providing direct care to a recipient,~~] has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and

2. Maintain documentation of each staff person's and, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;

(b) For each potential employee and volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts and equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100; and

2. Within **thirty (30)** [~~fourteen (14)~~] days of the date of hire or date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; [~~for each state in which the individual resided during the previous year:~~

~~1. Prior to employment; and~~

~~2. Prior to placement as a volunteer performing direct care staff or a supervisory function;~~]

(c) Not employ or permit [~~place~~] an individual to serve as a volunteer performing direct care or a supervisory function if the individual has [~~with~~] a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not **permit an employee or volunteer to transport an ABI recipient if the employee or volunteer has a conviction of Driving Under the Influence (DUI) during the past year;** [~~employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual~~] [~~who~~] [~~has a conviction of Driving Under the Influence (DUI) during the past year to transport an ABI recipient;~~]

(e) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a conviction of abuse or sale of illegal drugs **during the past five (5) years**;

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a conviction of abuse, neglect or exploitation;

(g) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a Cabinet for Health and Family Services finding of child [~~substantiated fraud,~~] abuse or neglect pursuant to the central registry [~~allegation~~];

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

(i) Evaluate **and document** the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(j)[~~(i)~~] Conduct **and document** periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a residential or structured day provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 [~~110~~] degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Unless the employee is a licensed or registered nurse, ensuring that staff administering medication:

1. Have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, and time if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Policy and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site,

(b) Include an evacuation drill to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and

(c) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided,

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department [~~DMHMR~~] prior to working independently with an ABI recipient which shall include:

1. Required [~~Sixteen (16) hours of~~] orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services; or

3. A speech therapist providing speech therapy; or

4. A board certified behavior analyst; and

(f) [~~Ensure that an individual, prior to volunteering, meets the requirements specified in subsection (14)(a), (b), (c), (d) (e), (f) and (g) of this section; and~~

~~(g)~~] Ensure that prior to the date of service as a volunteer, an individual receive [~~volunteer, prior to working, receives~~] training which shall include:

1. Required [~~Sixteen (16) hours of~~] orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer will provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by the provider.

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; and

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain human rights restrictions; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:

1. Within thirty (30) days of the recipient's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program[~~, an individual shall~~]:

(a) An individual shall be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;

(b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(c) An application packet containing the following shall be sub-

mitted by a support broker on behalf of the applicant [~~Submit an application packet to the department which shall contain~~]:

1. A copy of the allocation letter [~~received from BISU~~];

2. An Assessment form - MAP-351 [~~of Needs and Plan of Care form - MAP-011~~];

3. A statement for the need for long term care services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10 [~~Program Physician Certification form - MAP-4099~~];

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350, [~~and~~]

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(d) An individual shall [~~MAP-552K, Department for Community Based Services Notice of Availability of Income for Long Term Care/Waiver Agency/Hospice form,~~

~~(d) Submit the following information to the department.~~

~~1. An ABI Waiver Services Program Applicant/Recipient Memorandum of Understanding form - MAP-4096;~~

~~2. The ABI Recipient's Admission Discharge DCBS Notification form - MAP-24B; and~~

~~3. A Freedom of Choice of Home and Community Based Waiver Service Providers form - MAP-4102,~~

~~(e)~~] Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(e) An individual shall[~~(f)~~] meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(f) An individual shall[~~(g)~~] meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(g) An individual shall[~~(h)~~] receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The [~~assessment of needs and~~] plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability; or

(b) Receiving a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every twelve (12) [~~six (6)~~] months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISB, [~~BISU~~] and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C [~~MAP-24B~~], if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Terminated from the ABI waiver program;

(c)[~~(b)~~] Temporarily discharged;

(d)[~~(c)~~] Admitted to a nursing facility; or

(e)[~~(d)~~] Changing the primary provider.

(8) The department may exclude an individual from receiving an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service.

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the [~~assessment of need and~~] plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(e) An ABI recipient is no longer able to be safely served in the community; or

(f) The ABI recipient has reached maximum rehabilitation potential.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice to the department [~~BISU~~], the ABI recipient or legal representative and the case manager at least thirty (30) [~~ten (10)~~] days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address and telephone number of each current ABI provider in the state;

2. Provide assistance to the ABI recipient in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the ABI recipient or legal representative;

5. Ensure the health, safety and welfare of the ABI recipient until an appropriate placement is secured; and

6. Provide assistance to ensure a safe and effective service transition.

(11) Voluntary termination and loss of an ABI waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department [~~DMHMR~~].

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall:

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the [~~assessment of needs and~~] plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider

(a) Case management services, which shall:

1. Include initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop **an individualized plan of care** and update **it as necessary based on changes in the recipient's medical condition and supports** [~~the~~] [~~assessment of needs and~~] [~~plan of care~~],

4. Include monitoring of the delivery of services and the effectiveness of the [~~assessment of needs~~] and plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c. Include the ABI Plan of Care [~~Modification~~] form - MAP-109 [~~MAP-4098~~] being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service and updated as changes or recertification occurs, and shall include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency [~~or an agency that provides another ABI service~~];

b. Has completed case management training that is consistent with the curriculum that has been approved by the department [~~DMHMR~~] prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, [~~assessment of needs and~~] plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. [~~Shall not provide case management to more than forty (40) individuals at a given time irrespective of the payer source;~~

~~g. Shall not be a provider of other direct services;~~

~~h.~~] Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

g.[~~i.~~] Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

h.[~~j.~~] Shall assist an ABI recipient in planning resource use and assuring protection of resources;

i.[~~k.~~] Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence;

j.[~~l.~~] Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis;

k.[~~m.~~] Shall ensure twenty-four (24) hour availability of services; and

l.[~~n.~~] Shall ensure that the ABI recipient's health, welfare and safety needs are met; and

[~~o. Shall be supervised by an individual who is:~~

~~(i) A certified case manager, a certified disability management specialist, a certified rehabilitation registered nurse, or a certified life care planner; and~~

~~(ii) Employed by or under contract with the case management provider agency; and~~]

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved [~~assessment of needs and~~] plan of care;

c. The date of the service;

d. Beginning and ending time; and

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

(b) Behavior programming which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan [~~Be implemented by another ABI provider~~];

c. Be revised as necessary;

d Define the techniques and procedures used,

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of **prone or supine restraint,** corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. [~~The~~] Reports [~~of an ABI provider~~] involved in implementing the behavioral service plan;

6. Be provided by a behavior specialist who shall:

a.(i) Be a licensed psychologist;

(ii) Be a certified psychologist with autonomous functioning,

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing; [~~or~~]

(vii) Be an advanced registered nurse practitioner (ARNP);

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service,

b. The beginning and ending time, [~~and~~]

c. The signature, date and title of the behavioral specialist; and

d. A summary of data analysis and progress of the individual toward meeting goals of the services;

(c) Companion services which shall:

1. Include a nonmedical service, [~~or~~][,] supervision **or socialization as indicated in the recipient's plan of care** [~~or socialization~~];

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved [~~assessment of needs and~~] plan of care which are therapeutic and not diversional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs~~] and plan of care;

b. The date of the service;

c. Beginning and ending time; and

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

7. Not be provided to an ABI recipient who receives community residential services; and

8. Be provided by:

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

b. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

c. A group home licensed and operating in accordance with 902 KAR 20:078;

d. A community habilitation program certified by the department; or

e. A staffed residence certified by the department;

(d) Community residential services which shall:

1. Include twenty-four (24) hour supervision in:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091,

b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or

c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;

2. Not include the cost of room and board;

3. Be available to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated,

4. Utilize a modular home only if the

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

5. [~~If provided via a modular home, have 180 days October 1, 2003 to meet the modular home requirements;~~

~~6.~~] Not utilize a motor home;

6.[~~7.~~] Provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse,

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;

7.[~~8.~~] Provide assistance with daily living skills which shall include:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning, grocery shopping and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning;

k. Social skills training;

l. Reduction or elimination of a maladaptive behavior;

m. Instruction in leisure skills; and

n. Instruction in self medication;

8.[~~9.~~] Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved [~~assessment of needs and~~] plan of care;

9.[~~10.~~] Provide or arrange for transportation to services, activities and medical appointments as needed;

10.[~~11.~~] Include participation in medical appointments and follow-up care as directed by the medical staff; and

11.[~~12.~~] Be documented by a detailed staff note which shall include

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

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

(e) Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved [~~assessment of needs and~~] plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes, and

b. Included in the recipient's approved [~~assessment of needs and~~] plan of care for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A licensed psychologist;

c. A certified psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced registered nurse practitioner (ARNP); or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

10. Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the plan of care;

b. The date of the service;

c [~~b.~~] The beginning and ending time; and

d [~~c.~~] The signature, date of signature and title of the individual providing the service;

(f) Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist or an occupational therapy assistant if supervised by a licensed occupation therapist in accordance with 201 KAR 28:130; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time, and

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

(g) Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20.081;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

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

5. Not be provided to an ABI recipient who receives community residential services;

(h) A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Group home agency;

e. Staffed residence agency; or

f. Community habilitation program;

3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. Be limited to 168 hours in a six (6) month period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to an ABI recipient who receives community residential services;

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

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

(i) Speech, hearing and language services which shall be:

1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech therapist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. The beginning and ending time; and

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

(j) Structured day program services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20.066;

b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20:190;

c. A community mental health center licensed and operating in accordance with 902 KAR 20.091;

d. A community habilitation program certified by the department,

e. A sheltered employment program certified by the department; or

f. A therapeutic rehabilitation program certified by the department;

2. Be to rehabilitate, retrain and reintegrate an individual into the community;

3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;

4. Include the following services:

a. **Social skills training related to problematic behaviors identified in the recipient's plan of care;**

b. [~~Social skills training;~~

~~b.~~] Sensory or motor development;

c.[~~b.~~][~~c.~~] Reduction or elimination of a maladaptive behavior;

d.[~~c.~~][~~d.~~] Prevocational; or

e.[~~d.~~][~~e.~~] Teaching concepts and skills to promote independence including.

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with an ABI waiver service recipient's overall approved [~~assessment of needs and~~] plan of care;

7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;

8. Be appropriate:

a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;

b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and

c. According to the approved [~~assessment of needs and~~] plan of care and be therapeutic in nature and not diversional;

9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's [~~as-~~

~~sessment of needs and~~] plan of care;

10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;

11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. The beginning and ending time; and

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

(k) Supported employment which shall be:

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

2. Provided by a:

a. Supported employment provider;

b. Sheltered employment provider; or

c. Structured day program provider;

3. Provided one-on-one;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI recipient's file;

5.[~~4.~~] Limited to forty (40) hours per week alone or in combination with structured day services;

6.[~~5.~~] An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;

7.[~~6.~~] Exclusive of work performed directly for the supported employment provider; and

8.[~~7.~~] Documented by a time and attendance record which [~~with~~] shall include:

a. Progress towards the goals and objectives identified in the plan of care;

b. The date of service;

c.[~~b.~~] The beginning and ending time; and

d [~~c.~~] The signature, date and title of the individual providing the service;

(l) Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an ABI recipient to increase his ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 [~~form~~] and include three (3) estimates for vision and hearing;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision or hearing programs;

6. Not be necessary for life support;

7. Meet applicable standards of manufacture, design and installation; and

8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient, or

(m) Environmental modifications which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to an ABI recipient if:

a. Ordered by a physician;

b. Prior-authorized by the BISB [~~department~~];

c. Submitted on a Request for Equipment form - MAP-95 [~~form~~] by a case manager or support broker;

d. Specified in an ABI recipient's approved [~~assessment of needs and~~] plan of care;

e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and

f. Without the modification, the ABI recipient would require institutionalization;

3. Not include a vehicle modification or an electronic monitoring system;

4. Be limited to no more than $2000 [~~$1000~~] for an ABI recipient in a twelve (12) [~~six (6)~~] month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber.

Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

(1) A stroke treatable in a nursing facility providing routine rehabilitation services;

(2) A spinal cord injury for [~~in~~] which there is no known or obvious injury to the intercranial central nervous system;

(3) Progressive dementia or another [~~mentally impairing~~] condition related to mental impairment that is of a chronic degenerative nature, including [~~such as~~] senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;

(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage,

(5) A birth defect;

(6) Mental retardation without an etiology to an acquired brain injury; [~~or~~]

(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or

(8) Determination that the recipient has met his or her maximum rehabilitation potential.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents as follows:

(a) A Class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage [~~manager~~] agency;

(b) A Class II incident which shall:

1.a. Be serious in nature;

b. Include a medication error; or

c. Involve the use of a physical or chemical restraint;

2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager; and

3. Be reported to the following by the provider agency:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. BISB within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death; [~~Be serious in nature;~~

~~2. Include a medication error;~~

~~3. Involve the use of a physical or chemical restraint;~~

~~4. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager; and~~

~~5.~~][~~3.~~] [~~Be reported to the following by the provider agency:~~

~~a. The case manager or support broker within twenty-four (24) hours of discovery;~~

~~b. The guardian within twenty-four (24) hours of discovery; and~~

~~c. BISB~~] [BISU][~~, within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and~~

~~(c) A Class III incident which shall:~~

~~1. Be grave in nature;~~

~~2. Involve suspected abuse, neglaect, or exploitation;~~

~~3. Involve a medication error which requires a medical intervention;~~

~~4. Be a death;~~]

2.[~~5.~~] Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3.[~~6.~~][~~3.~~] Be Reported [~~to the following~~] by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB [~~BISU~~], within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB [~~BISU~~] shall occur on the following business day. The following documentation with a complete written report shall be submitted for a death:

(i) A current plan of care;

(ii) A current list of prescribed medications including PRN medications;

(iii) A current crisis plan;

(iv) Medication Administration Review (MAR) forms for the current and previous month;

(v) Staff notes from the current and previous month including details of physician and emergency room visits;

(vi) Any additional information requested by the department;

(vii) A coroner's report; and

(viii) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual between the age of twenty-one (21) to sixty-five (65) years of age applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~].

(3) The order of placement on the waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~] and by category of need of the individual as follows:

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

1. The individual currently is demonstrating behavior related to his acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or

2. The individual is demonstrating behavior related to his acquired brain injury which has resulted in his arrest; or

(b) Nonemergency.

(4) In determining chronological status, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~] shall be maintained and not change if an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(7) If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(8) A written notification of placement on the waiting list shall be mailed to the individual or his legal representative and case management provider if identified.

(9) Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) An individual or his legal representative and his case management provider shall be contacted in writing to verify the accuracy of the information on the waiting list and his continued desire to pursue placement in the ABI program; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

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

(11) An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time an individual's status changes.

(12) An individual shall be removed from the ABI waiting list if.

(a) After a documented attempt, the department is unable to locate the individual or his legal representative;

(b) The individual is deceased;

(c) The individual or his legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or his legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(13) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or his legal representative and the ABI case manager.

(14) The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(15) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI recipient participating in CDO shall include a home and community support service which shall

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals and not diversional in nature;

(d) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(e)1 Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(4) A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if[:

~~(a)~~] imminent danger to the consumer's health, safety, or welfare exists[; or

~~(b) The consumer fails to pay patient liability~~].

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident and equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) [~~fourteen (14)~~] days; and

2. If a consumer does not obtain a central registry check result within thirty (30) [~~fourteen (14)~~] days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aid abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) May be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization.

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(17) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 9. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 10 [~~9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-109 Prior Authorization for Waiver Services", March 2007 edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification", April 2007

edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", May 2003 edition;

(d) "MAP-95, Request for Equipment Form", June 2007 edition;

(e) "MAP-10 Waiver Services", January 2007 edition;

(f) "Incident Report", April 2007 edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007 edition

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;

(i) "Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition;

(j) "MAP-351, Medicaid Waiver Assessment", March 2007 edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; and

(l) "Person Centered Planning: Guiding Principles", March 2005 edition. [~~"MAP-011, Acquired Brain Injury Assessment of Needs and Plan of Care, December 2003 edition";~~

~~(b) "MAP-24B, Acquired Brain Injury (ABI) Recipient's Admission - Discharge - Department - for - Community - Based - Services (DCBS) Notification, May 2003 edition";~~

~~(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application, May 2003 edition";~~

~~(d) "MAP-95, Request for Equipment Form, September 2002 edition";~~

~~(e) "MAP-552K, Department for Community Based Services Notice of Availability of Income for Long Term CareWaiver Agency/Hospice, January 2001 edition";~~

~~(f) "MAP-4096, Acquired Brain Injury Waiver Services Program Applicant/Recipient Memorandum of Understanding, May 2003 edition";~~

~~(g) "MAP-4098, Acquired Brain Injury Plan of Care Modification, May 2003 edition";~~

~~(h) "MAP-4099, Acquired Brain Injury (ABI) Waiver Services Program Physician Certification, May 2003 edition";~~

~~(i) "Incident Report, December 2003 edition";~~

~~(j) "MAP-4102, Freedom of Choice of Home and Community Based Waiver Service Providers, May 2003 edition";~~

~~(k) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, January 2000 edition"; and~~

~~(l) "Rancho Los Amigos Level of Cognitive Function Scale, November 1974~~]

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

SHAWN CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer-directed option services program that allows Medicaid's ABI waiver participants to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs. This amendment also requires ABI providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. This amendment further establishes what types of documentation must be provided to the department in case of death of an ABI recipient. Additionally, this amendment requires case management providers to complete and submit to the department a Mayo-Portland Adaptability Inventory-4 for each ABI recipient within thirty (30) days of admission into the ABI program, annually thereafter, and upon discharge. The amendment after comments separates the case management function from other ABI services in order to promote freedom of choice by recipients and enhance quality control by having independent case managers monitoring service delivery; explicitly prohibits the use of prone or supine restraints to render consistent with supports for community living (SCL) policy; reinserts social skills training related to problematic behaviors identified in the recipient's plan of care to help equip ABI recipients for life without waiver services; clarifies class II and III incident reporting policy; clarifies provider documentation requirements; clarifies policy regarding length of time between conviction and eligibility for employment or volunteer work; deletes the requirement that a recipient's consumer directed option (CDO) participation be terminated if they fail to pay patient liability; extends the central registry check timeframe for an ABI provider from fourteen (14) days to thirty (30) days; and clarifies that an ABI provider may not permit an employee or volunteer with a DUI conviction within the past year to transport an ABI recipient.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the consumer-directed option services program established by KRS 205.5606. The amendment after comments separates the case management function from other ABI services in order to promote freedom of choice by recipients and enhance quality control by having independent case managers monitoring service delivery; explicitly prohibit's the use of prone or supine restraints to render consistent with supports for community living (SCL) policy; reinserts social skills training related to problematic behaviors identified in the recipient's plan of care to help equip ABI recipients for life without waiver services; and is necessary to clarify class II and III incident reporting policy; provider documentation requirements; policy regarding the length of time between conviction and eligibility for employment or volunteer work; benefits recipients by deleting the requirement that a recipient's consumer directed option (CDO) participation be terminated if they fail to pay patient liability; and benefits ABI providers by extending the central registry check timeframe from fourteen (14) days to thirty (30) days.

(c) How the amendment conforms to the content of the authorizing statutes: The initial amendment conforms to the content of KRS 205.2605 and 205 5606 by implementing the consumer-directed option services program and the amendment after comments amends or clarifies policy in accordance with the waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(d) How the amendment will assist in the effective administration of the statutes: The initial amendment assist in the effective administration of KRS 205.2605 and 205.5606 by implementing the

consumer-directed option services program and the amendment after comments amends or clarifies policy in accordance with the waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect Medicaid's ABI waiver recipients who opt to participate in the consumer-directed services program. Currently, there are approximately 120 recipients enrolled in the ABI waiver program.

(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: Medicaid ABI waiver recipients may opt to participate in the consumer directed option services program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed services must meet basic requirements including: complete and submit a consumer directed option provider agreement to the consumer's support broker, be at least eighteen (18) years of age, pass required background checks, be able to communicate effectively, and report any suspected abuse, neglect, or exploitation. The amendment after comments mandates that a provider document employee performance evaluations and document regularly-scheduled supervisory visits to ensure quality of service and appropriateness of services provided.

b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205 5606 and does not impose a cost on regulated entities. The amendment after comments does not impose a cost on regulated entities other than any administrative cost associated with a provider's documentation of employee performance evaluations and regularly-scheduled supervisory visits to ensure quality of service and appropriateness of services provided.

c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An ABI waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of non-medical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and non-medical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers. The amendment after comments promotes freedom of choice by recipients and enhances quality control by separating the case management function from other ABI services; benefits ABI service recipients by explicitly prohibiting the use of prone or supine restraints to render consistent with supports for community living (SCL) policy; benefits ABI service recipients by reinserting social skills training related to problematic behaviors identified in the recipient's plan of care to help equip ABI recipients for life without waiver services; benefits ABI recipients by deleting the requirement that a recipient's consumer directed option (CDO) participation be terminated if they fail to pay patient liability; and benefits ABI providers by extending the central registry check timeframe from fourteen (14) days to thirty (30) days.

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

(a) Initially Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries) Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, DMS is unable to determine a precise fiscal impact at this time regarding the initial amendment or the amendment after comments.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer. Additionally, DMS is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, DMS is unable to determine a precise fiscal impact at this time regarding the initial amendment or the amendment after comments.

(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 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: ABI providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff and volunteers. Central registry checks cost $10.00 per individual.

(9) Tiering: Is tiering applied? Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205.5606

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 will affect each Medicaid ABI waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

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

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:050. Approval of adoption assistance.

RELATES TO: KRS 199.462, 199.555, 199.557, 205.639(2), (3), 216B.450(5)[~~(4)~~], 600.020(20)[~~(2)~~], (48), 620.020(5), Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. [~~416,~~] 673, 12102, 1382c(a)(3)[~~1382(a)[, EO 2004-726]~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(6), (10), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [~~agencies for the proper administration of the cabinet and its programs. EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.~~] KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of [~~the law on~~] state-funded adoption assistance and federal Title IV-E adoption assistance.

Section 1. Definitions. (1) [~~"Entitlement" means a benefit received by a child from a biological parent which includes:~~

~~(a) Social Security;~~

~~(b) Black Lung;~~

~~(c) Veterans Administration; or~~

~~(d) Railroad Retirement.~~

~~(2)~~] "Extraordinary medical expenses" is defined by KRS 199.555(4).

(2) [~~(3)~~] "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(3) [~~(4)~~] "Nonrecurring adoption expenses" is defined by KRS 199.555(3) or means expenses described in 42 U.S.C. 673(a)(1)(B)(i)

(4) [~~(5)~~] "Postadoptive subsidy" means a payment for a special needs child that begins at the finalization of a special needs adoption.

(5) [~~(6)~~] "Preadoptive subsidy" means a payment for a special needs child that begins with a preadoptive placement agreement and if foster care per diem ceases.

(6) [~~(7)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.

(7) [~~(8) "State or federal education program" means a primary, secondary, or postsecondary educational program accredited by the:~~

~~(a) Kentucky Department of Adult Education and Literacy;~~

~~(b) Kentucky Department of Education; or~~

~~(c) U.S. Department of Education.~~

~~(9)~~] "State-funded adoption assistance" is defined by KRS 199.555(2).

[~~(10) "Supplemental Security Income" or "SSI" means a program established in 42 U.S.C. 1382.~~]

Section 2. Adoption Assistance Criteria. (1) The Secretary shall make the decision to pay and provide adoption assistance in the best interest of a child.

(2) [~~Adoption assistance shall be:~~

~~(a) Primarily for the benefit of the child and not the adoptive parents; and~~

~~(b) Limited to a special needs child.~~

~~(3)~~] A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1) or 42 U.S.C. 673(c), and because the child:

(a) Has a physical or mental disability;

(b) Has an emotional or behavioral disorder;

(c) Has a recognized risk of physical, mental or emotional disorder;

(d) Is a member of a sibling group in which the siblings are placed together;

(e) Has had previous adoption disruption or multiple placements;

(f) Is a member of a racial or ethnic minority and [~~an African American child~~] two (2) years old or older; or

(g)1. Is age seven (7) or older and has a significant emotional attachment or psychological tie to his foster family; and

2. The cabinet has determined that it would be in the child's best interest to remain with the family.

Section 3. Eligibility. (1) A special needs child considered for state-funded adoption assistance shall:

(a) Be committed to the Cabinet for Health and Family Services; and

(b) Not have a parent with a legal claim to his custody.

(2) A special needs child considered for federal title IV-E adoption assistance shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 at the time the adoption proceedings are initiated; and

(b) Not have a parent with a legal claim to his custody.

Section 4. Parental Standards. Parents receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 5. Adoption Agreement. (1) An adoptive parent and the secretary shall sign an [a].

(a) [~~DPP-195,~~] Adoptive placement agreement[,] to set forth the terms of a child's placement with the adoptive parent, if the child's adoption has not been finalized; and

(b) [~~DPP-1258A,~~] Adoption assistance agreement [~~Nonrecurring Adoption Expenses,~~] to set forth:

1. Nonrecurring adoption expenses, prior to finalization of the adoption, if such expenses will be incurred by the adoptive parent during the adoption of a special needs child, in accordance with KRS 199.555(6) or 45 C.F.R. 1356.41; and

2. [~~(c) DPP-1258, Adoption Assistance Agreement, to set forth~~] The scope and limits of the adoption assistance, prior to finalization of the adoption, in accordance with KRS 199.555(6) or 45 C.F.R. 1356.40(b).

(2) If a child is eligible for adoption assistance under 42 U.S.C. 673 (a)(2)(A)(i)(II), the requirement of Section(1)(a) of this section shall be waived.

(3)[~~(a)~~] The adoption assistance shall begin on the date that the:

(a)[~~1.~~] Adoptive placement agreement [~~DPP-195~~] indicates the child's date of placement; or

(b)[~~2.~~] Order of adoption is entered.[;]

(4)[~~(3)~~] The amount of state-funded adoption assistance or federal Title IV-E adoption assistance shall not exceed the amount which would be paid for foster care maintenance for the same child, in accordance with KRS 199.557(4) or 42 U.S.C. 673(a)(3), including medically-fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services. A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance to exceed a care plus resource home per diem reimbursement established by the Department for Community Based Services.

Section 6 Federal Title IV-E Adoption Assistance. (1) Unless a circumstance in accordance with subsection (2) of this section is met, federal title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

1. Eighteen (18); or

2. Twenty-one (21), if the child is determined to have a disability in accordance with subsection (3) of this section.

(2) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance shall be terminated if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or

3. Requests discontinuation of the adoption assistance; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor; or

5. Is inducted into military service.

(3) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) [~~1382(a) or 42 U.S.C. 416~~] by either the:

1. Social Security Administration; or

2. Medical review team of the cabinet.

(b) The factors to be considered by the medical review team in making a child's disability determination shall include:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment, and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered in making a determination shall include the child's:

1. Age;

2. Employment history;

3. Educational background; and

4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the Secretary and the:

1. Child, if the child is age eighteen (18) or older; or

2. Adoptive parent, if the child is under age eighteen (18).

(4) In accordance with 42 U.S.C. 673, an adoptive parent shall be responsible for notifying the cabinet of any change in circumstance to avoid overpayment in accordance with subsection (2) of this section.

(5) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;

(b) Preadoptive subsidy; or

(c) Postadoptive subsidy.

Section 7 State-funded Adoption Assistance. (1) Unless a circumstance in subsection (2) or (3) of this section is met, state-funded adoption assistance shall continue in accordance with KRS 199.555(8) until the child reaches:

(a) Age eighteen (18); or

(b) If the child is enrolled in high school or equivalent:

1. Age nineteen (19); or

2. The month of high school graduation or equivalency receipt, if the child's graduation or receipt of equivalency precedes the child's 19th birthday.

(2) The cabinet shall temporarily suspend state-funded adoption assistance during the period of time the adopted child:

(a)1. Resides in:

a. Foster care as defined in KRS 620.020(5);

b. A residential treatment facility as defined in KRS 600.020(48);

c. A psychiatric residential treatment facility as defined by KRS 216B.450(5);

d. A psychiatric hospital as defined by KRS 205.639(2) or (3) beyond thirty (30) consecutive calendar days; or

e. Detention:

(i) As defined in KRS 600.020(20);

(ii) Outside the adoptive home; and

(iii) For a period of thirty (30) calendar days or more; or

2. Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care and support for the child's special needs from a local, state, or federal public agency.

(3) State-funded adoption assistance shall be terminated if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased, or

3. Requests discontinuation of the adoption assistance; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor; or

5. Is inducted into military service.

(4) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstance to avoid overpayment in accordance with subsection (2) or (3) of this section.

(5) State-funded adoption assistance may include:

(a) Payment for extraordinary medical expenses related to the child's special needs that:

1. Existed prior to the adoption; and

2. Are not reimbursable by another source;

(b) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child,

(c) Preadoptive subsidy; or

(d) Postadoptive subsidy.

[~~(b) Be adjusted.~~

~~1. During the course of adoption assistance negotiation, if a child receives:~~

~~a. Adoption assistance and an entitlement from a biological parent, or~~

~~b. Adoption assistance and SSI; and~~

~~2. By subtracting the amount of the entitlement or SSI dollar for dollar from the negotiated adoption assistance, and~~

~~(c) Not be adjusted if a child receives an:~~

~~1. Insurance settlement from a biological parent; or~~

~~2. Entitlement from an adoptive parent.~~

~~(3) State-funded or federal title IV-E adoption assistance, in accordance with KRS 199.555(8) or 42 U.S.C. 673(a)(4), shall:~~

~~(a) Discontinue upon notice of a change in circumstance as specified in subsection (5)(b)(3) of this section; or~~

~~(b) Continue until the child reaches:~~

~~1. Age eighteen (18),~~

~~2. The month of graduation from high school, if the child:~~

~~a. Graduates from high school by age nineteen (19), and~~

~~b. Receives state-funded adoption assistance, or~~

~~3. Age twenty-one (21), if the child is:~~

~~a. Disabled;~~

~~b. Receiving SSI; and~~

~~c. Enrolled in a state or federal education program.~~

~~(4) The cabinet shall temporarily discontinue state-funded adoption assistance or federal title IV-E adoption assistance during~~

~~the period of time the adopted child:~~

~~(a)1. Resides in:~~

~~a. Foster care as defined in KRS 620.020(5);~~

~~b. A residential treatment facility as defined in KRS 600.020(18);~~

~~c. A psychiatric residential treatment facility as defined by KRS 216B.450(4); or~~

~~d. Detention:~~

~~(i) As defined in KRS 600.020(2);~~

~~(ii) Outside the adoptive home; and~~

~~(iii) For a period of thirty (30) consecutive calendar days or more; or~~

~~2. Is absent from the home of the adoptive parent for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and~~

~~(b) Receives care for the child's special needs from a local, state or federal entity.~~

~~(5) (a) If there is a change in the family situation or the special needs of the child, the adoption assistance may be changed accordingly.~~

~~(b) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstances which cause a change or discontinuance:~~

~~1. Pursuant to 42 U.S.C. 673;~~

~~2. To avoid overpayment in accordance with subsection (4) of this section; or~~

~~3. Due to:~~

~~a. An adoptive parent's request for discontinuance of adoption assistance, in accordance with KRS 199.555(9);~~

~~b. A child's death, marriage, full-time employment or induction into military service;~~

~~c. An adoptive parent's death;~~

~~d. The adoptive parent's failure to sign and return the DPP-1258, Adoption Assistance Agreement;~~

~~e. The adoptive parent's failure to sign and return the DPP-1258B, Adoption Assistance Annual Contact Form; or~~

~~f. The adoptive parent's voluntary or involuntary release from legal or financial responsibility for the support of the adopted child.~~

~~(6) (a) The amount of adoption assistance shall not exceed the amount which would be paid for foster care for the same child, in accordance with KRS 199.557(4), including the medically fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services.~~

~~(b) Federal Title IV-E and state-funded adoption assistance may also include:~~

~~1. Payment for extraordinary medical expenses related to the child's special needs that:~~

~~a. Existed prior to the adoption; and~~

~~b. Are not reimbursable by another source;~~

~~2. Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;~~

~~3. Preadoptive subsidy; or~~

~~4. Postadoptive subsidy.~~

~~(7)(a) An adoptive parent receiving the basic adoption assistance rate shall not be required to attend annual training.~~

~~(b) Except for the basic adoption assistance rate, as specified in paragraph (a) of this subsection, an adoptive parent shall meet annual training requirements for~~

~~1. An advanced resource home as established in 922 KAR 1:350;~~

~~2. A medically fragile resource home as established in 922 KAR 1:350;~~

~~3. A specialized medically fragile resource home as established in 922 KAR 1:350; or~~

~~4. A care plus resource home as established in 922 KAR 1:350.~~

~~(8) If the adoptive parent fails to meet the annual training requirement specified in subsection (7)(b) of this section, the cabinet may reduce the amount of adoption assistance paid to an adoptive home to the basic adoption assistance rate.~~

~~(9) Cabinet staff shall provide notice of a reduction or discontinuance of adoption assistance:~~

~~(a) Ten (10) calendar days in advance; and~~

~~(b) In accordance with 922 KAR 1:320, Section 6.~~

~~(10) A child committed to the cabinet and placed in therapeutic foster care, as described in 922 KAR 1:310:~~

~~(a) May be considered for adoption assistance, if the child meets criteria established in 922 KAR 1:350, Section 7(1)(b), and~~

~~(b) Shall not be eligible to receive adoption assistance to exceed the care plus resource home per diem reimbursement, established by the Department for Community Based Services.~~

~~(11) The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.~~]

Section 8. [~~6.~~] Annual Family Contact. (1) Annual contact with the adoptive family shall be made by mail or home visit to determine that the:

(a) [~~The~~] Child remains in the adoptive home;

(b) Parent continues to provide care and support for the child, and

(c) [~~The~~] Adoption assistance continues to meet the special needs of the child.

(2)[~~;~~

~~(c) The adoptive family meets the annual training requirements as specified in Section 5(7) of this administrative regulation; and~~

~~(d) A plan is developed with the adoptive family for meeting the annual training requirements as specified in Section 5(7)(b) of this administrative regulation.~~

~~(2) The DPP-1258B, Adoption Assistance Annual Contact Form, shall be used in the effective administration of subsection (1) of this section.~~

~~(3)~~] The cabinet may conduct a home visit after an adoption assistance annual contact is made [~~completed~~] by mail:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3.[~~a. The DPP-1258B is not completed by the adoptive parent; and~~

~~b.~~] Attempts to update information [~~complete the form~~] by additional mail or phone contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact [~~on the DPP-1258B~~]; or

(b) In accordance with 922 KAR 1:330.

Section 9. [~~7.~~] Adoption Assistance Renegotiation. (1) The cabinet may renegotiate adoption assistance before or after the adoption is finalized in accordance with KRS 199.555(6), (9), and 42 U.S.C. 673, and if there is a change in the:

(a) Child's special needs; or

(b) Circumstances of the adoptive parent, including a [~~Family's~~] situation that negatively affects the stability of the placement.

(2) Extraordinary medical expenses may be reimbursed through state-funded adoption assistance if conditions in KRS 199.555(6) are met.

(3) In accordance with 42 U.S.C. 673(a)(3), an adoptive parent shall be in concurrence with the renegotiated amount of federal Title IV-E adoption assistance.

(4) State-funded adoption assistance and federal Title IV-E adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.

Section 10. [~~8.~~] Service Appeal. An applicant for adoption assistance or an adoptive family shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 11. Notice of Change. Cabinet staff shall provide notice of a reduction, discontinuance, or termination of adoption assistance:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

Section 12. State-funded Adoption [~~9.~~] Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance paid per case shall be

limited by available funds for the state-funded adoption assistance program.

Section 13. Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance or federal Title IV-E adoption assistance consistent with training offered to resource home parents as specified in 922 KAR 1:350.

[~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DPP-195, Adoptive Placement Agreement, edition 06/04";~~

~~(b) "DPP-1258, Adoption Assistance Agreement, edition 06/04";~~

~~(c) "DPP-1258A, Adoption Assistance Agreement Nonrecurring Adoption Expenses, edition 06/04"; and~~

~~(d) "DPP-1258B, Adoption Assistance Annual Contact Form, edition 06/04".~~

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deanger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes federal Title IV-E and state-funded adoption assistance to support the adoption of special needs children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish federal Title IV-E adoption assistance and state-funded adoption assistance to support the adoption of special needs children in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the adoption assistance program and, thereby, conforms to the content of the authorizing statutes KRS 194A.050(1), which allows for the promulgation of administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet; KRS 199.555(10), which authorizes the cabinet to promulgate administrative regulations necessary to set criteria for the adoption of special needs children; and KRS 199.557(4), which permits the cabinet to promulgate administrative regulations necessary to implement federal Title IV-E adoption assistance payments.

(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 adoption assistance to support the adoption of special needs children in Kentucky and adhering to federal and state funding requirements regarding adoption assistance.

(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 distinguishes federal Title IV-E adoption assistance from state-funded adoption assistance and makes technical corrections to comply with KRS Chapter 13A..

(b) The necessity of the amendment to this administrative regulation: This amendment promotes and ensures immediate conformity of departmental Title IV-E adoption assistance policy and practice with 42 U.S.C. 673 and related federal interpretation, as mandated in an April 12, 2007, letter from the U.S. Department of Health and Human Services (HHS) to the cabinet. In addition, this amendment adheres to actions steps incorporated in a program improvement plan (PIP) concerning the same, also required by HHS to suspend (and ultimately avoid) federal financial penalty of Kentucky's Title IV-E funding.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes KRS 194A.050(1), KRS 199.555(6) and (10), and KRS 199.557(4) by ensuring compliance with state and federal funding requirements regarding adoption assistance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 199.555(10) and KRS 199.557(4) by ensuring immediate conformity of DCBS Title IV-E adoption assistance policy and practice with 42 U.S.C. 673 and related federal interpretation, thereby avoiding the financial penalty of reduced Title IV-E funding for Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 5,000 active adoption assistance cases in Kentucky. Eighty-six percent (86%) of these cases are eligible for Title IV-E assistance.

(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: Adoptive families receiving adoption assistance for a special needs child will have no new requirements imposed upon them by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to the regulated entities is associated with the enactment of new adoption assistance agreements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefit of an unreduced level of federal Title IV-E funding to Kentucky will accrue to adoption assistance payment recipients. Eighty-six percent (86%) of the state's active adoption assistance cases are eligible for Title IV-E assistance.

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

(a) Initially: Any initial costs will be offset by the State's avoidance of a federal financial penalty to its Title IV-E funding.

(b) On a continuing basis: No cost to the administrative body is 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: Federal Title IV-E and State funds are used to support adoption assistance as governed by this administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 673, 45 C.F.R. 1356.40(b), 1356.41

2. State compliance standards. KRS 194A.050, 199.555(6), (10), and 199.557(4)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 673, 45 C.F.R. 1356.40(b), 1356.41

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 199.555(10), KRS 199.557(4), and 42 U.S.C. 673

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? Any initial costs incurred as a result of this regulatory amendment will be offset by Kentucky's avoiding federal financial penalty of its Title IV-E funding

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for ongoing administration.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(23), 605.090(1)(b), (d), 610.110, Ky. Acts ch. 252 Part 1, H 10(7), 42 U.S.C. 672, OMB Circular A-122

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to establish administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services.~~] KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by [at] KRS 199.011.

(2) "Child-caring facility" or "facility" is defined by [at] KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by [at] KRS 600.020(23).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of.

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following:

(a) DPP-886, Private Child Care Client Interagency [~~Interagency~~] Referral Form; [~~and~~]

(b) DPP-886A, Application for Referral and Needs Assessment; and

(c) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or
2. Child Behavior Checklist For Ages 6-18;

(11) "Model program cost analysis" is defined by [~~at~~] KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by [~~at~~] KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-

placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator who shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency;

(b) For an initial or reassigned level of care; and

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed DPP-886, Private Child Care Client Inter-agency [~~Interagency~~] Referral Form, to the department;

(3) Reassess a child through a utilization review:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. [~~(c)~~] Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the level has expired;

(5) Monitor each child-caring facility and child-placing agency; and [~~, at the request of the cabinet, through a program review that includes:~~

~~(a) Reviewing the extent to which services provided are in compliance with the child's individual treatment plan;~~

~~(b) Determining if a change in the child's needs are reflected in the child's individual treatment plan;~~

~~(c) Reviewing records on site;~~

~~(d) Interviewing residents and staff;~~

~~(e) Conducting satisfaction surveys of each:~~

~~1. Cabinet staff person making a referral for out-of-home care,~~

~~2. Child placed by the cabinet in a child-caring facility or child-placing agency; and~~

~~3. Child's parent or custodian;~~

~~(f) Submitting written reports to the:~~

~~1. Child-caring facility or child-placing agency, and~~

~~2. Cabinet,~~]

(6) Maintain [~~Maintaining~~] a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes.

Section 4. Levels of Care. (1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence when the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:

(a) Has behavioral and physical, mental or social needs that may present a moderate risk of causing harm to himself or others;

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others, and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology. The cabinet shall establish a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, based upon the model program cost analysis defined at KRS 199.641(d). Each private, nonprofit child caring facility shall report to the cabinet annually, on Form DPP-888, cost report and time study data.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined. The factor shall be determined as follows:

(a) Based on the amount of treatment provided at each level of care; and

(b) By determining the median of:

1. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

2. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;

(c) The median number of daily treatment hours for children whose level is:

1. Determined, the median level of care shall be represented by an index factor of one (1); or

2. Not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to a child in the median level.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private[~~, nonprofit~~] child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private[~~, nonprofit~~] child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in subsection (6)(a) of this section; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private[~~, nonprofit~~] child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private[~~, nonprofit~~] child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private[~~, nonprofit~~] child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private[~~, nonprofit~~] child-caring facilities **or child-placing agencies** to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) [~~Shall be tailored to fit the specific needs identified for the service region served by the child-caring facility;~~

~~(c) Shall be available within the geographic area encompassed by the service region; and~~

~~(d)~~] May include case management responsibilities shared between the cabinet and the child-caring facility **or child-placing agency**.

(8) Payment to child-caring facilities **or child-placing agencies** that provide alternative services according to subsection (7) of this section shall be based upon[~~:~~

~~(a) The model program cost analysis; and~~

~~(b)~~] Expectations agreed upon between the cabinet and the child-caring facility **or child-placing agency** such as:

(a)[~~1.~~] Reduced length of stay in out-of-home placement;

(b)[~~2.~~] Increased safety from child abuse or neglect;

(c)[~~3.~~] Increased number of children moving into and remaining in permanent placement;

(d)[~~4.~~] Increased number of children and their families cared for in close proximity to their home communities;

(e)[~~5.~~] Increased number of children reunified with their families;

(f)[~~6.~~] Increased accountability for success in after care; and

(g)[~~7.~~] Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The provider shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

(a) Level I - fifty-one (51) [~~forty-eight (48)~~] dollars and nineteen (19) cents, effective July 1, 2007;

(b) Level II - sixty-one (61) [~~fifty-eight (58)~~] dollars and fifty-two (52) cents, effective July 1, 2007;

(c) Level III -$109 71, effective July 1, 2007 [~~$106.71~~];

(d) Level IV:

1. $151.03, effective July 1, 2007 through June 30, 2008, or

2. $133.80, effective July 1, 2008[- $130.80]; and

(e) Level V:

1. $210 64, effective July 1, 2007, through June 30, 2008; or

2. $189 54, effective July 1, 2008 [~~- $186.54, effective October 1, 2004~~].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) Effective July 1, 2007, through June 30, 2008, the rate for emergency shelter care shall be:

1. $115 31 per day for a child-caring facility with a treatment license; or

2. $101.41 per day for a child-caring facility without a treatment license

(b) Effective July 1, 2008, the rate for emergency shelter care shall be:

1. $102.87 [~~Ninety-nine (99) dollars and eighty-seven (87) cents~~] per day for a child-caring facility with a treatment license; or [~~and~~]

2. Ninety (90) [~~(b) Eighty-seven (87)~~] dollars and eighty-three (83) cents per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section [~~ninety-nine (99) dollars and eighty-seven (87) cents~~] per day[~~, effective July 1, 2007~~]; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section [~~ninety-nine (99) dollars and eighty-seven (87) cents~~] per day[~~, effective July 1, 2007~~]; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) Effective July 1, 2007, basic daily rate for foster care shall be forty-three (43) [~~forty (40)~~] dollars.

(2) Effective July 1, 2007, daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - seventy-three (73) [~~seventy (70)~~] dollars.

(b) Level III - seventy nine (79) [~~seventy-six (76)~~] dollars and seventy-eight (78) cents.

(c) Level IV - ninety-seven (97) [~~ninety-four (94)~~] dollars and eleven (11) cents.

(d) Level V - $134 26 [~~$131.26~~].

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, forty-three (43) [~~forty (40)~~] dollars per day, effective July 1, 2007, for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. A child-caring facility or child-placing agency shall.

(1) Inform the department of the levels of care the facility or agency has the ability to serve;

(2) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

(a) Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services including:

1. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

2. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

(c) Support services that:

1. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

2. Allow a child to cope with the disability or distress;

3. Provide access to improving the educational or vocational status of the child; and

4. Provide essential elements of daily living;

(3) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

(a) For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:

1. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or

2. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and

(b) For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level consisting of a completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology) [~~and Scales of Independent Behavior-Revised (SIB-R),~~] by the first utilization review due date and every twelve (12) months thereafter; and

(c) To the gatekeeper and designated cabinet staff, a copy of the following completed forms:

1. On a quarterly basis, for a private child care residential placement, [~~"~~]CRP-001, Children's Review Program Residential Application for Level of Care Payment[~~"~~]; or

2. On a semiannual basis for a foster care placement, [~~"~~]CRP-003, Children's Review Program Foster Care Application for Level of Care Payment[~~"~~];

(4) Provide outcomes data and information as requested by the gatekeeper; and

(5) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

(a) The Council on Accreditation; or

(b) The Joint Commission on Accreditation for Healthcare Organizations.

(6) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (5) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(3) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(3) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date the cabinet shall.

(a) Suspend payments until the necessary information has been submitted to the gatekeeper; or

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged; or

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(3) of this administrative regulation have been submitted on time,[~~;~~] and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, [~~or~~] child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, [~~or~~] child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, [~~or~~] child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, [~~or~~] child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level, and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency [~~Inter-agency~~] Referral Form for an initial or reassigned level;

2. CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization form for a utilization review; [~~or~~]

3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review; or

4. CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, form for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-004, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive:

(a) To the date of the most recent utilization review due date; or

(b) The date of admission, whichever is most recent.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-004, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, [or] child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following[,] within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. [2.] If the child has an IQ of seventy (70) or above:

a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or

b. Child Behavior Checklist for Ages six (6) - eighteen (18).

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", edition 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", edition 6/01;

(c) "CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04;

(d) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", edition 11/04;

(e) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07;

(f) "CRP-004, Children's Review Program Notice of Level of Care Redetermination", edition 11/04;

(g) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", edition 11/04;

(h) "CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment", edition 7/07;

(i) "DPP-114, Level of Care Schedule", edition 7/07;

(j) "DPP-886, Private Child Care Client Inter-agency Referral Form", edition 10/04;

(k) "DPP-886A, Application for Referral and Needs Assessment", edition 07/07;

(l) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", edition 10/04; and

(m) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990.[; and

~~(n) "Scales of Independent Behavior-Revised (SIB-R)", edition 1996.~~] [~~"DPP-114, Level of Care Schedule, edition 10/04";~~

~~(b) "DPP-886, Private Child Care Client Inter-agency Referral Form, edition 10/04";~~

~~(c) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach), edition 7/00";~~

~~(d) "Child Behavior Checklist for Ages 6-18 (Achenbach), edition 6/01";~~

~~(e) Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology), edition 1990,~~

~~(f) "Scales of Independent Behavior-Revised (SIB-R), edition 1996";~~

~~(g) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities, edition 10/04";~~

~~(h) "CRP-001, Children's Review Program Residential Application for Level of Care Payment, edition 11/04";~~

~~(i) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization, edition 11/04";~~

~~(j) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment, edition 11/04";~~

~~(k) "CRP-004, Children's Review Program Notice of Level of Care Redetermination, edition 11/04"; and~~

~~(l) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, edition 11/04".~~]

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the five levels of care based upon the needs of a child for whom the cabinet has legal responsibility, a payment rate for each level, responsibilities of the gatekeeper, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program cost analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and proce-

dures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities/requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050(1), 199.641(4), 605.090(1)(d), and 605.150(1) by establishing the rate setting methodology, methodology for placement of a child committed to the cabinet with a private child care provider, levels of care, reimbursement rates, and related provider and gatekeeper responsibilities/requirements.

(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 through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the private child care provider rates in accordance with House Bill 380 of the 2006 General Assembly, updates incorporated materials, and makes technical corrections and clarifications to comply with KRS Chapter 13A and best practice.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement the private child care provider rate increases included in House Bill 380 from the 2006 General Assembly, ensure the health and safety of children in private placements, provide clarifications per communications with the private provider community, the Children's Alliance, and the Children's Review Program, and make corrections to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its incorporation of private child care provider rate increases to comply with the effective date of the provision concerning the same contained in House Bill 380 from the 2006 General Assembly.

(d) How the amendment will assist in the effective administration of the statutes: In addition to compliance with House Bill 380 from the 2006 General Assembly, the amendment also clarifies procedures and responsibilities contained within the administrative regulation, and makes technical corrections to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2007, the Children's Review Program's database indicated that 3,340 children committed to the cabinet are placed in out-of-home care with a private child care provider. There are 57 private child care providers who have an existing agreement with the cabinet for out-of-home care services.

(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: Responsibilities, including incorporated materials, have been updated to reflect best practice and aid the determination of an appropriate level of care for a child currently in (or being placed in) a private child care placement.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private child care providers will realize a three dollar increase in each reimbursement rate per day for each child committed to the cabinet in their care, in accordance with House Bill 380 from the 2006 General Assembly.

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

(a) Initially: The projected fiscal impact of this administrative regulation for fiscal year 2007-2008 is $10,457,100. House Bill 380 included $3.43 million for $3 increases to private child care providers. Additional increases are estimated to cost $7.03 million. CHFS officials plan to drawn down additional federal and restricted funds to cover these increases for State Fiscal Year 2007-2008.

(b) On a continuing basis: If the next biennium budget does not include funding to sustain the additional increases, the private child care provider reimbursement rates will revert back to include only the $3 increase with an estimated $3 43 million in annual cost plus any growth in the number of committed children in private child care provider settings.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E and state funds are the source of funding for 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: An increase of funding was provided to the cabinet through House Bill 380 of the 2006 General Assembly. There is no increase in fees 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? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, OMB Circular A-122

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605 090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, OMB Circular A-122

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is 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. 42 U.S.C. 672, OMB Circular A-122, KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The projected fiscal impact of this administrative regulation for fiscal year 2007-2008 is $10,457,100. House Bill 380 included $3.43 million for $3 increases to private child care providers. Additional increases are estimated to cost $7 03 million. CHFS officials plan to drawn down additional federal and restricted funds to cover these increases for State Fiscal Year 2007-2008.

(d) How much will it cost to administer this program for subsequent years? If the next biennium budget does not include funding to sustain the additional increases, the private child care provider reimbursement rates will revert back to include only the $3 increase with an estimated $3.43 million in annual cost plus any growth in the number of committed children in private child care provider settings.

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:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 1:010. Standards for certified school personnel.

RELATES TO: KRS 161.020, 161.028(1)(a), 161 030, 161.048(1)(d), 161.095, 161.120

STATUTORY AUTHORITY: KRS 161.020, 161 028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board establish standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the standards required for certified school personnel to obtain or maintain certification.

Section 1. Kentucky [~~Successful completion of the standards established in Section 2 of this administrative regulation shall be indicated using the criteria established in:~~

~~(1) New Teacher Standards for Preparation and Certification, or~~

~~(2) Experienced Teacher Standards for Preparation and Certification~~

~~Section 2 New~~] Teacher Standards for Preparation and Certification. The following [~~new teacher~~] standards [~~established in this section~~] shall be used in the evaluation and assessment of a teacher for initial and advanced certification and for the accreditation of teacher preparation programs[~~, which shall be designed to~~]:

(1) Standard 1. The teacher demonstrates applied content knowledge: The teacher demonstrates a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas.

(2) Standard 2. The teacher designs and plans instruction: The teacher designs/plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(3) Standard 3. The teacher creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(4) Standard 4. The teacher implements and manages instruction: The teacher introduces/implements/manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(5) Standard 5. The teacher assesses and communicates learning results: The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(6) Standard 6. The teacher demonstrates the implementation of technology: The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.

(7) Standard 7. Reflects on and evaluates teaching and learning: The teacher reflects on and evaluates specific teaching/learning situations and/or programs.

(8) Standard 8. Collaborates with Colleagues/Parents/Others: The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Standard 9. Evaluates teaching and implements professional development: The teacher evaluates his/her overall performance with respect to modeling and teaching Kentucky's learning goals, refines the skills and processes necessary, and implements a professional development plan.

(10) Standard 10. Provides leadership within school/community/profession: The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being. [~~(1) Address the student academic expectations as provided by 703 KAR 4:060;~~

~~(2) Meet the content standards provided by 16 KAR 5:010;~~

~~(3) Prepare a candidate to teach children, including a child from a culturally diverse background, and~~

~~(4) Manage tasks identified in the new teacher performance standards:~~

~~(a) New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(b) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(c) New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(d) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(e) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;~~

~~(f) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(g) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan;~~

~~(h) New Teacher Standard VIII, content knowledge. The teacher demonstrates a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas; and~~

~~(i) New Teacher Standard IX, demonstrates implementation of technology. The teacher uses technology to support instruction; access and manipulate data, enhance professional growth and productivity, communicate and collaborate with colleagues, parents, and the community; and conduct research.~~

~~Section 3. Experienced Teacher Standards for Preparation and Certification. The experienced teacher standards established in this section shall be used in the accreditation of teacher preparation programs and in the evaluation and assessment of a teacher for certification purposes, other than for a plan in a professional education specialty for which the Education Professional Standards Board has established specific standards in KAR Title 16.~~

~~(1) Experienced Teacher Standard I, demonstrates professional leadership. The teacher provides professional leadership~~

~~within the school, community, and education profession to improve student learning and well-being;~~

~~(2) Experienced Teacher Standard II, demonstrates knowledge of content. The teacher demonstrates content knowledge within own area of certification and application to other areas, content areas, and certification areas;~~

~~(3) Experienced Teacher Standard III, designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(4) Experienced Teacher Standard IV, creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(5) Experienced Teacher Standard V, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(6) Experienced Teacher Standard VI, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(7) Experienced Teacher Standard VII, reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning;~~

~~(8) Experienced Teacher Standard VIII, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

~~(9) Experienced Teacher Standard IX, engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan; and~~

~~(10) Experienced Teacher Standard X, demonstrates implementation of technology. The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.~~

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

~~(a) New Teacher Standards for Preparation and Certification, November 1994; and~~

~~(b) Experienced Teacher Standards for Preparation and Certification, June 1994.~~

~~(2) This material may be inspected, copied, or obtained at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601.~~]

TOM STULL, Chairperson

APPROVED BY AGENCY: September 24, 2007

FILED WITH LRC: October 2, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2007 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards required for certified school personnel to obtain and maintain a certificate.

(b) The necessity of this administrative regulation: This administrative regulation establishes the Kentucky Teacher Standards for Preparation and Certification with which all educator preparation programs are aligned to ensure that all teachers in the Commonwealth of Kentucky are prepared for the classroom.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 161.028(1)(a), the Education Professional Standards Board has "the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently, all educator preparation programs and many school districts use the standards established in this regulation to design their programs and professional development for Kentucky's school teachers. The standards are also used to evaluate new teachers and experienced teachers.

(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 unifies the New Teacher Standards for Preparation and Certification and the Experienced Teacher Standards for Preparation and Certification into the Kentucky Teacher Standards for Preparation and Certification. The standards are also re-ordered.

(b) The necessity of the amendment to this administrative regulation: This amendment unifies the two existing standards so that all the Commonwealth's teachers are held to common standards and are prepared under uniform standards no matter whether they are a new teachers or experienced teachers.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 161.028(1)(a), the Education Professional Standards Board has "the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate."

(d) How the amendment will assist in the effective administration of the statutes: By combining the New Teacher Standards and the Experienced Teacher Standards into the Kentucky Teacher Standards, educator preparation programs will be able to align their initial teacher programs and their advanced teacher programs to better serve the Kentucky's P-12 students. All teachers will be judged by the same standards, therefore improving the quality of teaching state-wide.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: twenty-eight (28) Educator Preparation Institutions, 174 school districts, certified educators, teacher candidates, and P-12 students.

(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 twenty-eight (28) educator preparation institutions shall realign their programs to produce quality edu-

cators who meet the standards. The 174 school districts may realign their evaluation instruments to the Kentucky Teacher Standards. Certified educators and teacher candidates through out the Commonwealth shall meet the Kentucky Teacher Standards to obtain or maintain certification. No actions will be required of P-12 students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be a cost to the twenty-eight (28) educator preparation institutions in realigning their programs; however, that cost is not possible to assess as each program is administered differently. If the 174 school districts choose to realign their employment evaluations to the standards there will be a one time cost associated with that change that will differ by district depending on the current evaluation instruments. Certified educators and teacher candidates should not have any additional cost, although educator preparation intuitions may pass on the cost of realigning their programs to these groups through tuition increases. There should be no cost to P-12 students.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Educator preparation institutions, school districts, and educators will all benefit from one set of standards for all teachers instead of one set for experienced teachers and one set for new teachers. All teachers will be held to the same standards and educator preparation institutions will be able to design their undergraduate and graduate programs to meet one set of standards. P-12 students will benefit from well trained teachers that are consistently judged by the same set of standards.

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

(a) Initially: There should be no additional cost.

(b) On a continuing basis: There should be no additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly increased.

(9) TIERING: Is tiering applied? No, tiering is not applied. All teachers will be required to meet the Kentucky Teaching 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 Education Professional Standards Board, twenty-eight (28) state approved educator preparation units, 174 school districts, new and experienced teachers, and P-12 students.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028(1)(a), and 161.030.

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? There should be no associated cost.

(d) How much will it cost to administer this program for subsequent years? There should be no associated 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:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5.010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Kentucky teacher standards" [~~"Experienced teacher standards"~~] means the standards established in 16 KAR 1:010 that identify what a Kentucky [~~an effective experienced~~] teacher shall know and be able to do.

(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework. [~~"New teacher standards" means the standards established in 16 KAR 1:010 that identify what a new teacher shall know and be able to do.~~]

(9) "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

(a)1. At least a bachelor's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or

b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

2. As required by Section 4(2)(g)6 and (4)(e) of this administrative regulation, a master's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or

b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The Kentucky [~~experienced~~] teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a partial portfolio for the continuing education option established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a full portfolio for the continuing education option established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky [~~new~~] teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040;

(b) Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade (5) in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies;

2. Middle school option 2: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies;

3. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following majors [~~specializations~~]:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades five (5) through twelve (12) with one (1) or more of the following majors [~~specializations~~]:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Technology education;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian;

(g) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;
6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or
7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Psychology, grades 8-12;

(b) Sociology, grades eight (8) through twelve (12);

(c) Journalism, grades eight (8) through twelve (12);

(d) Speech/media communications, grades eight (8) through twelve (12);

(e) Theater, primary through grade twelve (12);

(f) Dance, primary through grade twelve (12);

(g) Computer information systems, primary through grade twelve (12); or

(h) English as a second language, primary through grade

twelve (12).

(4) An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Computer science, grades eight (8) through twelve (12);

(b) English as second language, primary through grade twelve (12);

(c) Gifted education, primary through grade twelve (12);

(d) Driver education, grades eight (8) through twelve (12);

(e) Reading and writing which shall require a master's degree in reading, primary through grade twelve (12);

(f) Instructional computer technology, primary through grade twelve (12);

(g) Teacher Leader, all grades;

(h) Other instructional services - school safety, primary through grade twelve (12);

(i)[~~(h)~~] Other instructional services - environmental education, primary through grade twelve (12);

(j)[~~(i)~~] Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall be obtained by either:

1. Completion of the requirements of Section 5(2) of this administrative regulation; or

2. Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSA); or

(k)[~~(j)~~] Learning and behavior disorders, grades eight (8) through twelve (12).

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and

2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program.

(3)(a) In order to assist districts in meeting the "highly qualified" teacher requirements of the No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., a professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (b) of this subsection.

(b) A certificate extension or certificate endorsement shall be issued if an educator submits a completed application and meets the following requirements:

1. A valid Kentucky professional teaching certificate;

2. Current employment in a certified position or a bona fide offer of employment in a certified position in a Kentucky public school,

3. Successful completion of the applicable content assessments; and

4. Either:

a. A declared major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index [~~HOUSSE Index~~] contained within the application form, TC-HQ. Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(4) If a teacher currently holds a professional certificate in the secondary grades, eight (8) through twelve (12), and applies for a certificate extension or endorsement in the same content area for middle school grades five (5) through nine (9), the teacher shall not be required to complete the content assessment.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4.040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-1, rev. 4/2004, Education Professional Standards Board; and

(b) Form TC-HQ, edition 4/2004, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601 [~~40602~~], Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

APPROVED BY AGENCY: September 24, 2007

FILED WITH LRC: October 2, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2007 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky teaching certificates to be issued for teaching positions.

(b) The necessity of this administrative regulation: This administrative regulation notifies teachers of the prerequisites and application process for issuance of specific Kentucky teaching certificates and the teaching permissions for those certificates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teacher and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation delineates the prerequisites for issuance of a Kentucky teaching certificate for specified teaching positions.

(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 defines "major" as an academic area of concentration consisting of at least thirty (30) hours of course work. The amendment adds the requirement that secondary school teachers to receive a major in the primary area they teach. A teacher leader endorsement deriving from the Teacher Leader Master's Program to be promulgated in 16 KAR 5.010 is added as a new certification.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation notifies teachers of the prerequisites and application process for issuance of specific Kentucky teaching certificates and the teaching permissions for those certificates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teacher and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation delineates the prerequisites for issuance of a Kentucky teaching certificate for specified teaching positions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation would affect all future teachers gaining the Masters degree after 2009 by adding the new endorsement to their certificates along with their rank change. The exact number is incalculable.

(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: 28 Educator Preparation Institutions, 174 school districts, certified educators, teacher candidates, and P-12 students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to any of the entities. Teacher candidates seeking secondary teaching certification usually earn degree in the content area; therefore, the added requirement of a major should not impact them.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts, new and experienced educators, and P-12 students will all benefit from secondary teachers who have received uniform coursework in their content area. Educator preparation institutions will benefit from receiving students that have been prepared by those secondary teachers. In addition, the new teacher leader endorsement will benefit all stakeholders by increasing the supply of advanced teachers who can guide new teachers and supply students with advanced teaching expertise. Teachers will receive this endorsement as a part of the new degree program without additional fees to add the endorsement.

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

(a) Initially: There should be no cost.

(b) On a continuing basis: There should be no cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly increased.

(9) TIERING: Is tiering applied? No, all individuals who meet the delineated requirements will receive the same certification.

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 Education Professional Standards Board, Public Colleges and Universities, and school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161 028(1)(a), (b), and (f) and KRS 161.030

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? There should be no additional cost.

(d) How much will it cost to administer this program for subsequent years? There should be 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: The enactment of the changes within this regulation will result in no additional revenues nor expenditures for state government; however, the incorporation of the teacher leader endorsement into the revised Masters degree programs in Kentucky will save each degree completer the current fifty (50) dollar fee that is now paid for adding the equivalent endorsement area as a separate item to the teacher's certificate. The new Masters degree will "automatically" grant the Teacher Leader Endorsement upon completion of the degree as part of the resulting rank change.

Education Professional Standards Board
(Amendment)

16 KAR 4:010. Qualifications for professional school positions.

RELATES TO: KRS 158 782, 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation or teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes certificate qualifications for the positions in a local school district for which a specific certificate is not available.

Section 1. This administrative regulation shall not apply to a position for which a specific certificate is available under another administrative regulation promulgated by the board in KAR Title 16.

Section 2. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

(1) Kentucky certification for school superintendent;
(2) A bachelor's or advanced degree in business; or
(3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994.

Section 3. Director of Districtwide Services. A director of district wide services shall qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, school business administrator, or principal.

Section 4. Director of Federally Supported Programs. A director of federally supported programs shall qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 5. Consultant. A consultant in elementary education, special education, or in an academic subject field shall qualify for the position on the basis of the following:
(1) Option 1:
(a) Master's degree or nondegree fifth-year program;
(b) [(2)] Certification in the appropriate subject field or service area; and
(c) [(3)] Three (3) years of teaching experience in the appropriate subject field or service area.
(2) Option 2: Teacher leader endorsement.

Section 6. Reading Program Consultant. A reading program consultant shall qualify for the position on the basis of certification as a reading specialist or as an elementary consultant with appropriate training in reading instruction as verified by the local school district.

Section 7. Gifted Education Coordinator. A gifted education coordinator shall qualify for the position on the basis of the following:
(1) A master's degree or nondegree fifth-year program;
(2) A certificate endorsement for teacher of gifted education; and
(3) Three (3) years of teaching experience.

Section 8. Special Education Work Study Program Coordinator. A special education work study program coordinator shall qualify for the position on the basis of certification as a teacher of exceptional children.

Section 9. Professional Development Coordinator. The professional development coordinator shall qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 10. Instructional Television Coordinator. An instructional television coordinator shall qualify for the position on the basis of certification for classroom teaching

Section 11. Instructional Coordinator. The instructional coordinator shall qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 12. School Health Coordinator. A school health coordinator shall qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 13. Chapter I Remedial Mathematics. A teacher holding a valid early elementary certificate, grades K-4, shall qualify for teaching mathematics in a Chapter I program in grades 5-8.

Section 14. Teachers for Alternative Schools. A classroom teacher in an alternative school shall qualify on the basis of a certificate valid for classroom teaching

Section 15. Instructional Technology Director. An instructional technology director shall qualify on the basis of a certificate valid for classroom teaching.

Section 16. Federal Grant Coordinator - School Level. A federal grant coordinator at the school level shall qualify on the basis of a certificate valid for classroom teaching.

Section 17. Job Training Partnership Act Teacher. A teacher in the JTPA Program shall qualify on the basis of a certificate valid for classroom teaching.

Section 18. Family Resource Center Director. A family resource center director shall qualify on the basis of a certificate valid for classroom teaching or for administration.

Section 19. Migrant Advocate. A migrant advocate shall qualify on the basis of a certificate valid for classroom teaching.

Section 20. Home and Hospital Teacher. A home and hospital teacher shall qualify on the basis of a certificate valid for classroom teaching.

Section 21. Dean of Students. A dean of students shall qualify on the basis of an instructional leadership certificate - school principal.

Section 22. Testing Coordinator. A testing coordinator shall qualify on the basis of an individual intellectual assessment certificate, psychometrist certificate, supervisor certificate, or guidance certificate.

Section 23. District Assessment Coordinator. A district assessment coordinator shall qualify on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 24. Highly-Skilled Educator. (1) A highly-skilled educator shall qualify on the basis of qualifications established by the Kentucky Department of Education pursuant to KRS 158.782 and 704 KAR 4:030.
(2)(a) Successful experience as a highly-skilled educator since July 1, 1998 shall be considered administrative experience for purposes of advanced administrative certification.
(b) The Education Professional Standards Board shall review the certification qualifications established in this subsection if any of the following requirements of the highly-skilled educator program are substantially revised by the General Assembly or the Kentucky Department of Education:
1. Selection criteria;
2. Training requirements; or
3. Functions and responsibilities.

Section 25. Athletic Director. An athletic director, if serving in a position paid from the certified salary schedule, shall qualify on the basis of a certificate valid for classroom teaching or for administration.

TOM STULL, Chairperson
APPROVED BY AGENCY: September 24, 2007
FILED WITH LRC: October 2, 2007 at 3 p m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2007 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board,100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes certificate qualifications for positions in a local school district for which a specific certificate is not available

(b) The necessity of this administrative regulation: This administrative regulation provides notice to school districts and applicants of the certification necessary for certain school positions for which a specific certificate is not available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the required certification for school positions that do not already have specified certifications.

(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 states that teacher candidates completing the Teacher Leader Masters Program to be promulgated in 16 KAR 5:010 will receive the teacher leader endorsement and may be employed as a consultant. This amendment also clarifies that a reading program consultant shall qualify for the position on the basis of certification as a reading specialist or as an elementary consultant who has received specialized training in reading.

(b) The necessity of the amendment to this administrative regulation: The amendment provides an additional teaching endorsement to correspond with the advanced coursework that will be a part of the Teacher Leader Masters Program. This amendment clarifies the certification necessary for districts to employ individuals as reading program consultants.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets the required certification for school positions that do not already have specified certifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: twenty eight (28) Educator Preparation Institutions, 174 school districts, certified educators, teacher candidates, and P-12 students.

(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 of the entities should have to take any further action to comply with the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Educator preparation institutions will benefit from the added area of certification tied to their teacher leader masters program. Teachers will benefit from the added endorsement with no additional fee that recognizes the advanced course work they have accomplished in the teacher leader masters program. School districts will benefit from the increase in the potential pool of consultants to employ. Students will benefit from qualified teachers delivering instruction.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees No fees are directly or indirectly increased.

(9) TIERING: Is tiering applied? No, all applicants with the correct qualifications will be treated the same.

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 Education Professional Standards Board, Public Colleges and Universities, and school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161 028, 161.030

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 should have no effect on either area.

(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? There should be no additional cost.

(d) How much will it cost to administer this program for subsequent years? There should be 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: The enactment of the changes within this regulation will result in no additional revenues nor expenditures for state government; however, the incorporation of the teacher leader endorsement into the revised Masters degree programs in Kentucky will save each degree completer the current fifty (50) dollars fee that is now paid for adding the equivalent endorsement area as a separate item to the teacher's certificate. The new Masters degree will "automatically" grant the Teacher Leader Endorsement upon completion of the degree as part of the resulting rank change.

Education Professional Standards Board
(Amendment)

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.

RELATES TO: KRS 161.028, 161.030, 164.945-164 947, 20 U.S.C. 1021-1030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

(4) "EPSB" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.

(7) "State accreditation" means recognition by the EPSB that an institution has a professional education unit that has met accreditation standards as a result of review, including an on-site team review.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:

(a) Shall be accredited by the state; and

(b) May be accredited by NCATE

(2) State accreditation shall be:

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education" established by NCATE. The accreditation standards shall include:

1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3 Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 - Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.

(4) All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945-164 947 and 13 KAR 1:020 shall.

(a) Be accredited by the state through the EPSB under this administrative regulation as a condition of offering an educator certification program or a program leading to rank change; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPSB to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates.

(2) Stage One.

(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPSB for review and acceptance by the board indicating the institution's [~~their~~] intent to begin the developmental process establish an educator preparation program.

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11 of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.

(e) Following review of the documentation, EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two.

(a) A board of examiners team shall make a one (1) day visit to the institution to verify the paper review.

(b) The team shall be comprised of:

1. One (1) representative from a public postsecondary institution;

2. One (1) representative from an independent postsecondary institution; and

3. One (1) representative from the Kentucky Education Association.

(c) The team shall submit a written report of its findings to the EPSB.

(d) The EPSB shall provide a copy of the written report to the institution.

(e)1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(f) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(4) Stage Three.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and

2. Continue the developmental process and the first accreditation process established in this administrative regulation.

(c) An institution denied temporary authorization may reapply.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit candidates;

2. Monitor, evaluate, and assess the academic and professional competency of candidates; and

3. Report regularly to the EPSB on the institution's progress.

(e) During the two (2) year period of temporary authorization, the EPSB:

1. May schedule additional technical visits; and

2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.

(5) Stage Four.

(a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.

(b) All further accreditation activities shall be governed by the remaining sections of this administrative regulation, which govern the first accreditation of an educator preparation institution.

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.

(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:

1. Faculty and students in each approved program;

2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and

3. Major program developments in each NCATE standard.

(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at http://www.aacte.org. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.

2. An institution seeking state-only accreditation shall complete the annual report online at http://www.kyepsb.net/teacherprep/index.asp and submit it electronically to the division contact through the EPSB Web site.

(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.

(b) The EPSB may pursue action against the unit based on data received in this report.

(3) The Accreditation Audit Committee [~~Reading Committee~~] shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 12 of this administrative regulation.

(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.

(b) A content program review committee shall examine program content and faculty expertise.

(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.

(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:

(a) Review the preconditions documents prepared by the institution; and

(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:

(a) Determine that a submitted material meets requirements;

(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;

(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or

(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.

(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit informa-

tion to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.

(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:

(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs,

2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:

a. The degree or award levels for each program;

b. The administrative location for each program; and

c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described above, prepared for each location at which off-campus programs are geographically located; and

4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.

(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.

(d) Precondition Number 4 The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

1. The vision and mission of the institution and the unit;

2. The unit's philosophy, purposes, and goals;

3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;

4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and

5. A description of the system by which the candidate proficiencies described are regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:

1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative and off-campus programs; and

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:

a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and

b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and

2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:

(a) The mission of the institution and unit;

(b) The unit's philosophy, purposes, professional commitments, and dispositions;

(c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;

(d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and

(e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:

(a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;

(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;

(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and

(d) A monitoring plan for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1.010 or incorporated by reference into this administrative regulation including:

(a) NCATE Unit Standards;

(b) Kentucky's Safety Educator Standards for Preparation and Certification;

(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and

(d) Kentucky's Standards for Guidance Counseling Programs;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1.010; and

(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky [~~New and Experienced~~] Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each candidate [~~student~~] before or at the time of admittance to the program.

Section 12. Teacher Leader Masters Programs and Planned Fifth-Year Programs for Rank II. (1) All master's programs for rank change or planned fifth-year program for Rank II approved or accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.

(a) Masters programs for initial certification shall be exempt from the requirements of this section.

(b) A masters program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.

(c) Candidates admitted to masters programs or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.

(d) An institution of higher learning with a masters program or an planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.

(e) An institution submitting a redesigned masters program or a planned fifth-year program for Rank II for review pursuant to the requirements of subsection (2) of this section, after approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation, may become operational beginning January 1, 2009.

(f) Institutions submitting redesigned masters programs or planned fifth-year program for Rank II shall not be subject to any submission dates for program approval until December 31, 2010.

(g)1. The EPSB shall appoint a Masters Redesign Review Committee to conduct reviews of redesigned masters programs and planned fifth-year programs for Rank II submitted for approval between May 31, 2008 and December 31, 2010.

2. Masters programs and planned fifth-year program for Rank II submitted for approval between May 31, 2008 and December 31, 2010 shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Masters Redesign Review Committee.

3.a. After review of a masters program or planned fifth-year program for Rank II, the Masters Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board.

i. Approval;

ii. Approval with conditions; or

iii. Denial of approval.

b. The EPSB shall consider recommendations from staff and the Masters Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.

(2)(a) In addition to the other requirements in this administrative regulation, beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate masters program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:

(b) Program design components which shall include the following descriptions and documentation of:

1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;

2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates.

3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;

4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and

5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members.

(c) Program curriculum that shall include core component courses designed to prepare candidates to:

1. Be leaders in their schools and districts;

2. Evaluate high-quality research on student learning and college readiness;

3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management.

4. Gain expertise in content knowledge, as applicable;

5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;

6. Support P-12 student achievement in diverse settings;

7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards;

8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and

9. Design and conduct professionally relevant research projects.

(d) The unit's continuous assessment plan that includes in addition to the requirements of Section 11(2) of this administrative regulation:

1. Instruments to document and evaluate candidate ability to demonstrate impact on P-12 student learning

2. Clinical experiences and performance activities; and

3. A description of a culminating performance-based assessment.

(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.

(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.

(c) 1. Institutions with approved Teacher Leader Master's Program, may establish an endorsement program of teacher leadership coursework for candidates who received master's degrees at out of state institutions or who received master's degrees from Kentucky programs approved prior to May 31, 2008.

2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.

Section 13 [~~12~~] Board of Examiners. (1) A Board of Examiners shall:

(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent groups:

1. Teacher educators;

2. P-12 teachers and administrators; and

3. State and local policymaker groups; and

(b) Include at least thirty-six (36) members representing the following constituencies;

1. Kentucky Education Association, at least ten (10) members;

2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and

3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:

a. Kentucky Association of School Administrators;

b. Persons holding positions in occupational education;

c. Kentucky Branch National Congress of Parents and Teachers;

d. Kentucky School Boards Association;

e. Kentucky Association of School Councils;

f. Kentucky Board of Education;

g. Kentucky affiliation of a national specialty program association;

h. Prichard Committee for Academic Excellence;

i. Partnership for Kentucky Schools; and

j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.

(4) The EPSB shall select and appoint for each scheduled on-site accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to be co chaired by an NCATE appointed team member and a state team chair appointed by the EPSB. The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2). The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

(6) For an institution seeking state-only accreditation, the EPSB shall appoint a chair from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his place of employment for an accreditation visit.

Section 14. [~~13.~~] Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

(1) The faculty handbook;

(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;

(3) Faculty vitae or resumes;

(4) A random sample of graduates' transcripts;

(5) Conceptual framework documents;

(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;

(7) Course syllabi;

(8) Policies, criteria and student records related to admission and retention;

(9) Samples of students' portfolios and other performance assessments;

(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;

(11) Student evaluations, including student teaching and internship performance; and

(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

Section 15. [~~14.~~] Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB shall conduct a previsit to the institution to make a final review of the arrangements. For an NCATE-accredited institution, the previsit shall be coordinated with NCATE.

Section 16. [~~15.~~] On-site Accreditation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit.

(2) The EPSB shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.

(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4)(a) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(b) Off-campus programs shall be considered as part of the unit and the unit shall be accredited, not the off-campus programs.

(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:

(a) Met;

(b) Met, with one (1) or more defined areas for improvement; or

(c) Not met.

(6)(a) The Board of Examiners shall review each program and cite the areas for improvement for each, if applicable.

(b) The Board of Examiners shall define the areas for improvement in its report.

(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.

(8) The on-site evaluation process shall end with a brief oral report:

(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or

(b) By the state team chair for a state-only visit.

Section 17. [~~16.~~] Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:

(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.

(b) The first draft shall be typed and distributed to Board of Examiners members.

(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.

(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.

(e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) working days either:

1. A written correction to the factual information contained in

the report; or

2. Written notification that the unit head has reviewed the draft and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.

(2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as follows:

(a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the Board of Examiners Report Format for State/NCATE Accreditation Visits.

Section 18. [~~17.~~] Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 [~~22~~] of this administrative regulation shall be followed.

(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.

Section 19. [~~18.~~] Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;

(c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) Two (2) school administrators appointed from nominees provided by the Kentucky Association of School Administrators.

(2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson.

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.

(5) Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the evaluation team, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;
2. Provisional accreditation;
3. Denial of accreditation; or
4. Revocation of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.

(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

(a) Approval;

(b) Approval with conditions; or

(c) Denial of approval.

(7) The Board of Examiners Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee's if the Accreditation Audit Committee's decision differs from the Board of Examiners' evaluation report.

(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.

Section 20. [~~19.~~] Official State Accreditation Action by the Education Professional Standards Board. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the educator preparation unit.

(3) Decision options following a first accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled five (5) years following the semester of the visit;

(b) Provisional accreditation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. The unit has accredited status but shall satisfy provisions by meeting each previously-unmet standard. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a. Accredit; or

b. Revoke accreditation.

2. If the unit is accredited, the next on-site visit shall be scheduled for five (5) years following the semester of the first accreditation visit;

(c) Denial of accreditation. This accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates; or

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit;

(b) Accreditation with conditions.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. If the EPSB renders this decision, the unit shall maintain its accredited status, but shall satisfy conditions by meeting previously unmet standards. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the decision to accredit with conditions, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a. Continue accreditation; or

b. Revoke accreditation.

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred;

(c) Accreditation with probation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The institution shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPSB shall decide to:

a. Continue accreditation; or

b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit; or

(d) Revocation of accreditation. Following a comprehensive site visit that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:

1. No longer meets preconditions to accreditation, such as loss of state approval or regional accreditation;

2. Misrepresents its accreditation status to the public;

3. Falsely reports data or plagiarized information submitted for accreditation purposes; or

4. Fails to submit annual reports or other documents required for accreditation.

(5) Notification of EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:

(a) The institution shall inform students currently admitted to a certification or rank program of the following:

1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and

2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank; and

(b) An institution for which the EPSB has denied or revoked accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

Section 21: Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises in between accreditation visits, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the Accreditation Audit Committee for further investigation.

(3)(a) Notice of the EPSB's decision and the complaint shall be sent to the institution.

(b) Within thirty (30) days of receipt of the complaint, the institution shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint.

(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the institution.

(b) Upon completion of review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:

1. Accreditation;

2. Accreditation with conditions;

3. Accreditation with probation; or

4. Revocation of accreditation.

(5) The institution shall receive a copy of the Accreditation Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.

(6)(a) The recommendation from the Accreditation Audit Committee and the Institution's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the educator preparation unit.

Section 22. [~~20.~~] Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.

(4) Program approval decision options shall be:

(a) Approval, with the next review scheduled during the regular accreditation cycle unless a substantial revision is made;

(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be

documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:

1. Approval; or

2. Denial of approval; or

(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPSB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as the basis for a recommendation to the full EPSB for.

(a) Approval;

(b) Approval with conditions; or

(c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 23. [~~21.~~] Public Disclosure. (1) After a unit and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.

Section 24. [~~22.~~] Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification An institution shall appeal on the grounds that:

(a) A prescribed standard was disregarded;

(b) A state procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Examiners who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 25. [~~23.~~] Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly-scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.

Section 26 [~~24.~~] In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB shall identify an educator preparation unit as:

(1) "At-risk of low performing" if an educator preparation program has received a:

(a) State accreditation rating of "provisional";

(b) State accreditation rating of "accreditation with conditions"; or

[~~(c) Quality Performance Index of "At-Risk of Low Performance" established in Section 25 of this administrative regulation, or~~]

(2) "Low performing" if an educator preparation program has received a[~~:~~

~~(a)~~] state accreditation rating of "accreditation with probation"[~~; or~~

~~(b) Quality Performance Index of "Low Performance" established in Section 25 of this administrative regulation~~].

Section 27. [~~25.~~] The Education Professional Standards Board shall produce a state report card, which shall include:

(1) General information on the institution and the educator preparation unit;

(2) Contact information for the person responsible for the educator preparation unit;

(3) Type or types of accreditation the unit holds;

(4) Current state accreditation status of the educator preparation unit;

(5) Year of last state accreditation visit and year of next scheduled visit;

(6) Table of the unit's approved certification program or programs;

(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for last three (3) years;

(8) Tables relating the unit's faculty disaggregated by FTE, ethnicity, and gender for last three (3) years;

(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;

(10) Table relating pass rates on the required assessments;

(11) Table relating pass rates for Kentucky Teacher Internship Program;

(12) Table relating pass rates for Kentucky Principal Internship Program (if applicable);

(13) Table indicating student teacher satisfaction with preparation program;

(14) Table relating teacher intern satisfaction with preparation program;

(15) Table relating new teacher (<3 years) and supervisor satisfaction with preparation program.[~~;~~

~~(16) Table aggregating quality performance indicators established in this section and the standards established in Section 2 of this administrative regulation,~~

~~(17) Hyperlinks to various supporting documents; and~~

~~(18) A Quality Performance Index (QPI) for each educator preparation unit. The Quality Performance Index shall comply with the provisions established in this subsection.~~

~~(a) The Quality Performance Index shall provide an indicator of the overall performance of the educator preparation unit.~~

~~(b) The Quality Performance Index shall be a calculation of three (3) separate performance measures:~~

~~1. Annual summary PRAXIS II pass rate;~~

~~2. Overall mean score on the Kentucky Educator Preparation Program new teacher survey; and~~

~~3. Three (3) year average pass rate on the Kentucky Teacher Internship Program.~~

~~(c) 1. Performance points shall be assigned to the outcome of each of the three (3) performance measures and each multiplied by specific performance weights.~~

~~2. The sum of the product shall be divided by the sum of the~~

~~performance weights.~~

~~3. The resulting quotient shall produce the Quality Performance Index.~~

~~(d) The Quality Performance Index shall be divided into four (4) performance categories:~~

~~1. A score of 4.00 to 3.50 shall indicate "Excellent Performance";~~

~~2. A score of 3.49 to 3.00 shall indicate "Satisfactory Performance";~~

~~3. A score of 2.99 to 2.75 shall indicate "At Risk of Low Performance" and shall identify the educator preparation unit as "at-risk of low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation; and~~

~~4. A score of less than 2.75 shall indicate "Low Performance" and shall identify the educator preparation unit as "low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation.~~

~~(e) The performance points and performance weights are established in the "Quality Performance Index Calculation" document incorporated by reference.]~~

Section 28 [~~26~~] Approval of Off-site and On-line Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the Education Professional Standards Board before offering courses or whole programs at an off-campus site.

(a) The institution shall submit a written request to the board to begin offering courses at the off-site location describing the location and physical attributes of the off campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the board before the institution may begin offering courses at the location.

(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.

(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.

Section 29. [~~27.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education", 2002 Edition, National Council for Accreditation of Teacher Education;

(b) NCATE Unit Standards (2002 Edition), National Council for Accreditation of Teacher Education;

(c) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;

(d) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;

(e) "Education Professional Standards Board Emergency Review of Certification Programs Procedure ", September 2003;

(f) [~~"Quality Performance Index Calculation", 2005 edition, Education Professional Standards Board;~~

~~(g)~~] "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;

(g)[~~(h)~~] "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and

(h)[~~(i)~~] "Kentucky's Standards for Guidance Counseling Programs" derived from the Council for Accreditation of Counseling and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

APPROVED BY AGENCY: September 24, 2007

FILED WITH LRC: October 2, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2007 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to alert educator preparation institutions of the requirements for accreditation and program approval.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of educator preparation units and approval of programs.

(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 replaces the Accreditation Audit Committee for the Reading Committee as the responsible committee in reviewing the college and university annual reports. The amendment sunsets all current master's programs and planned fifth year programs for rank change and establishes new requirements for all master's programs or planned fifth year programs for Rank II approved after May 31, 2008. The amendment establishes the Teacher Leader Master's program. The regulation clarifies that an off-campus program is part of a unit and that only a unit, not an off-campus program, may be accredited. The amendment provides for the Board of Examiner Team Chair to provide a response to the Education Professional Standards Board if the Board of Examiners Team's decision differs with the Accreditation Audit Committee accreditation decision. A procedure for revocation of a program for cause is added and the current Quality Performance Index requirement has been removed. Off-campus programs will now have to be approved by the Education Professional Standards Board prior to course work being provided from that location. Out of state on-line programs will now be required in addition to state or regional accreditation, to have either accreditation from the National Council for Accreditation of Teacher Education or Distance Education Training Council.

(b) The necessity of the amendment to this administrative regulation: This amendment places more stringent requirements on master's programs and planned fifth year programs for Rank II to

ensure that Kentucky's experienced teachers are receiving quality advanced preparation that enables them to use student achievement data to advance the quality of Kentucky's public education system. Other amendments have been added so that the Education Professional Standards Board may review program quality for cause and monitor program quality more closely.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of educator preparation units and approval of programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 28 Educator Preparation Institutions, 174 school districts, certified educators, teacher candidates, and P-12 students.

(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 28 Educator Preparation Institutions will have to redesign their current master's programs and planned fifth year programs and resubmit them for approval prior to December 31, 2010. The other entities will not need to take any action.

(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 a significant initial cost to the educator preparation units in the redesign of their programs. This cost will differ among institutions depending on whether their current program already has the necessary programs in place, and therefore it is impossible to estimate. Certified educators and teacher candidates may bear this cost through tuition increases. The other entities should bear no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will benefit by having advanced programs designed to increase student achievement, as well as closer ties to their local school districts. School districts, teachers, and P-12 students will benefit from better preparation programs that specifically focus on the needs of the school districts, teachers, and students.

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

(a) Initially: There will be additional cost to the Education Professional Standards Board in man-power hours and other associated costs during the transitional period. At this time the agency is unable to estimate that cost as it will depend on the number of programs submitted and the interval of time between submissions.

(b) On a continuing basis: No additional cost after all current programs are sunsetted.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary. An additional staff member may be required during the transitional period to efficiently guide the programs through the approval process

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were directly or indirectly increased.

(9) TIERING: Is tiering applied? No, all educator preparation programs will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public colleges and universities, the Education Professional Standards Board, and the 174 school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028 and 161.030.

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 should be no cost to the school districts; however there will be a cost to the colleges and universities that have to redesign their current programs. This cost can not be estimated as it will differ depending on the current program and resources at each college or university. The Education Professional Standards Board will have an increase in manpower hours.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for the school districts or the Education Professional Standards Board. Public colleges and universities may have an increase in revenue due to better prepared P-12 students and more teachers enrolling in the Teacher Leader Master's programs.

(c) How much will it cost to administer this program for the first year? The cost is capable of estimation at this time. There will be an increase in manpower hours; however, there should be no other start-up expenses.

(d) How much will it cost to administer this program for subsequent years? After the current programs are sunsetted on December 31, 2010, there will be no additional costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET
Office of the Secretary
(Amendment)

101 KAR 2:210. Summary plan descriptions for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A 030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY. KRS 18A 2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the summary plan descriptions for public employees covered under the self-insured plan. This administrative regulation incorporates by reference eleven (11) summary plan descriptions distributed to members of the Public Employee Health Insurance Program providing specific information on plan coverage, exclusions, and appeal rights.

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

(a) "Commonwealth of Kentucky, Essential Summary Plan

Description", January 1, 2008 [~~2007~~], edition;

(b) "Commonwealth of Kentucky, Enhanced Summary Plan Description", January 1, 2008 [~~2007~~], edition;

(c) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Select", January 1, 2008 [~~2007~~], edition; (d) "Commonwealth of Kentucky, Premier Summary Plan Description", January 1, 2008 [~~2007~~], edition;

(e) "Commonwealth of Kentucky, Select Summary Plan Description", January 1, 2008 [~~2007~~], edition;

(f) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Essential", January 1, 2008 [~~2007~~], edition;

(g) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Enhanced", January 1, 2008 [~~2007~~], edition;

(h) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Premier", January 1, 2008 [~~2007~~], edition;

(i) "Summary Plan Description, Commonwealth of Kentucky Health Flexible Spending Account", January 1, 2008 [~~2007~~], edition;

(j) "Summary Plan Description, Commonwealth of Kentucky Dependent Care Flexible Spending Account", January 1, 2008 [~~2007~~], edition; and

(k) "Summary Plan Description, Commonwealth of Kentucky, Health Reimbursement Account", January 1, 2008 [~~2007~~], edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor [~~200 Fair Oaks Lane, Suite 516~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p m.

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007 at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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. Thomas B. Stephens, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas B. Stephens

Provide a brief summary of:

(a) What this administrative regulation does· This administrative regulation incorporates summary plan descriptions, by reference, for various health benefit plans offered through the Public Employee Health Insurance Program.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the statutory mandate of KRS 18A.2254, which requires the Personnel Cabinet to incorporate by reference in an administrative regulation the summary plan descriptions for public employees covered under the Public Employee Health Insurance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute KRS 18A.2254 by incorporating by reference, the summary plan descriptions for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. This amendment constitutes a compilation of the health benefit options, eligibility rules, exclusions, and appeal rights for plan year 2008.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the additional health benefit for the plan year 2008 and the statutory mandate to annually update the regulations incorporating the summary plan descriptions contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes· This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the summary plan descriptions be incorporated by reference in an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A 2254, which mandates that the summary plan descriptions be incorporated by reference in an administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Both state and select county and local government entities, including employees of the local school boards and districts, will be affected. Additionally, all eligible employees and participants of the Public Employee Health Insurance Program will be affected by additional health benefit options and changes to the material incorporated by reference in this amended regulation. Specifically, this encompasses approximately 153,000 eligible employees under KRS 18A.225(1)(a) and a total of 242,000 (which would include qualifying beneficiaries and dependents).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions as administrative regulations. The 2008 Summary Plan Descriptions will provide notice of the benefits provided to those individuals covered under the Public Employee Health Insurance Program for plan year 2009.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will not have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2008 will have identical health insurance coverage benefits as plan year 2007.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in funding or fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

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 all participants in the Public Employee Health Insurance Program which includes state government, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2257, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and Internal Revenue Code Subsections 105, 106, 125, 152 and 213.

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2009 and each subsequent plan year.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:160. Peer reviews.

RELATES TO: KRS 325.301(6)
STATUTORY AUTHORITY: KRS 325.240, 325.301(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.301(6) requires a firm that performs an audit, review, or compilation to enroll in and complete an approved peer review program. [~~establishes certified public accounting firm review standards.~~] This administrative regulation establishes the standards and procedures that a CPA firm must follow to comply with the requirements of KRS 325.301(6) [~~obtain a peer review~~].

Section 1. Definitions. "Sponsoring organization" means an entity administering [~~operating~~] a peer review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" of the American Institute of Certified Public Accountants.

Section 2. (1)(a) When a firm applies to receive an initial license it shall advise the board if it performs audits, reviews, or compilations. A firm that indicates it is going to perform one (1) of these services shall submit with its license application:

1. Proof from a sponsoring organization that it is currently enrolled in a peer review program; and

2. A copy of the firm's most recent peer review report that was received by the firm within three (3) years prior to submitting the application. If the firm has not received a peer review report within the three (3) year time period it shall notify the board of that fact.

(b)Failure to submit proof of enrollment and, if applicable, a copy of the peer review report shall result in the:

1. Application being ineligible for consideration until proof of enrollment and, if applicable, the peer review report is received by the board; and

2. The firm being prohibited from providing any audit, review or compilation services. ~~The board shall review its records to determine if a firm that performs audits, reviews or compilations has submitted proof that it is enrolled and has completed a peer review program administered by a sponsoring organization.~~

(c)1. A firm that is applying for an initial license that received an adverse or second successive modified report within three (3) years prior to submitting the application shall also submit with its license application a copy of:

a. The firm's written response to the either the adverse or second successive modified report that was sent to the sponsoring organization; and

b. A letter from the firm that describes the current status of deficiencies that comprised the basis for the adverse or second successive modified report.

2. The board shall review and consider adverse and second successive modified reports, the firm's response, and the letter submitted by the firm to determine if the firm shall be issued a license.

3. If the board decides to issue a license it may impose restrictions on the firm after taking into consideration the reported deficiencies and any remedial action since the issuance of the adverse or second successive modified report. [~~If proof has not been submitted, a letter shall be issued to the firm advising it that it shall enroll in a peer review program operated by a sponsoring organization within forty-five (45) days of the date of the letter.~~]

~~(2) Within twenty-four (24) months of the date of enrollment in a peer review program conducted by a sponsoring organization, the firm shall submit to the board:~~

~~(a) A letter from the sponsoring organization indicating satisfactory completion of a peer review; or~~

~~(b) The peer review report.~~

~~(3)(a) A sponsoring organization shall report to the board on a semiannual basis the names of the firms enrolled in the peer review program.~~

~~(b) A sponsoring organization shall bear the costs of verifying compliance with the standards for performing peer reviews.~~]

Section 3. (1)(a) On or after the effective date of this administrative regulation staff of the board shall review the board records and determine if a firm with a current license is required to be enrolled in a peer review program. If staff determines the firm shall be or is currently enrolled in a peer review program they shall send a letter to the firm manager advising him or her to submit to the board a copy of its most recent peer review report and letter of acceptance within (thirty) 30 days from receipt of the letter. Failure to submit a copy of its most recent peer review report and letter of acceptance may result in the board initiating disciplinary action against the firm's license.

(b) Staff of the board shall review every peer review report and acceptance letter when they are received in the board office. An unmodified peer review report or a modified report that is not a second successive modified peer review report shall be discarded according to the board's record retention schedule. An adverse peer review report or a second successive modified peer review report and the firm's responses to the report shall be presented to the board for review and determination of any action to be taken against the firm after taking into consideration:

1. The deficiencies described in the report;

2. The firm's written response to the either the adverse or sec-

ond successive modified report that was sent to the sponsoring organization;

3. A letter from the firm that describes the current status of deficiencies that comprised the basis for the adverse or second successive modified report; and

4. Any remedial action instituted by the firm since the issuance of the adverse or second successive modified report.

Section 4. (1) Upon completion of the process prescribed in Section 3, when in the future a firm receives a peer review report, the firm shall provide the board with a copy of the report within fifteen (15) business days of receiving the report.

(2) If the report is unmodified or a modified report but is not a second successive modified report no further action on the part of the firm or the board is required. Board staff shall dispose of the documents according to its retention schedule.

(3) An adverse peer review report or a second successive modified peer review report shall require the firm to submit the acceptance letter from the sponsoring organization to the board for review and determination of any action to be taken against the firm after taking into consideration:

(a) The deficiencies described in the report;

(b) The firm's written response to the either the adverse or second successive modified report that was sent to the sponsoring organization;

(c) A letter from the firm that describes the current status of deficiencies that comprised the basis for the adverse or second successive modified report; and

(d) Any remedial action instituted by the firm since the issuance of the adverse or second successive modified report.

Section 5. If a firm is granted an extension of time to complete a peer review, the firm shall submit to the board a copy of a letter from the sponsoring organization that granted the extension.

Section 6. (1) A sponsoring organization shall report to the board on a quarterly basis the name of every firm enrolled in the peer review program and the name of every firm dropped or terminated from the program since the last quarterly report was provided by the sponsoring organization.

(2) A sponsoring organization shall bear the costs of verifying compliance with the standards for performing peer reviews.

Section 7. If a firm is not enrolled in an approved peer review program when it enters into an agreement to engage in performing [~~perform~~] an audit, review or compilation, it shall not continue to [~~begin~~] work on the engagement until it has:

(1) Enrolled in an approved peer review program; and

(2) Submitted to the board a letter of enrollment in an approved peer review program from a sponsoring organization.

Section 8.(1) Documents Available on Web sites. In lieu of submitting a copy of a peer review report and all accompanying documents, a firm may notify the board staff that the documents requested are available for viewing and downloading at a specific Web sites.

(2) Board staff may then attempt to obtain a copy of the required documents from the referenced Web sites.

(3) If staff is not able to download a copy of the requested documents the firm shall submit the required copy to the board staff.

Section 9. Exclusion from Peer Review. The following report or procedure shall be excluded from the peer review process:

(1) A proposal or other communication that describes the work proposed by a firm or its employees that is a prerequisite to deciding whether to perform an audit, review or compilation of financial statements;

(2) A letter of engagement or other information prepared by a firm in accordance with the Statements on Standards for Accounting and Review Services (SSARS) No 8 which solely involves preparing compiled financial statements for management use only as described in SSARS 8.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Performing and Reporting on Peer Reviews, January 1, 2005" [~~June 1, 1999" is incorporated by reference~~].

(b) "Statements on Standards for Accounting and Review Services No 8", December 31, 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the office of the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. These standards are also located on a Web site maintained by the American Institute of Certified Public Accountants at www.aicpa.org.

J. STEVEN MARCUM, CPA, President

APPROVED BY AGENCY: October 10, 2007

FILED WITH LRC: October 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007 at 10 a.m., at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2007, five (5) work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It describes the procedures a public accounting firm that performs audits, reviews or compilations must follow to enroll in and submit a copy of a report the firm receives from a peer review provider to the Board of Accountancy.

(b) The necessity of this administrative regulation: KRS 325.301(6) requires all public accounting firms that perform an audit, review or compilation to complete an approved peer review program. This regulation establishes the procedures for a firm to follow in regard to submitting information to the Board of their participation in a program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.301(6) authorizes the Board to insure a firm enrolls and completes the proper type of peer review program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance as to the standards that a peer review provider must follow to be considered an approved provider and what material a firm is to send to the Board following completion of the peer review process.

(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 require firms to submit a copy of the peer review report they receive and other documentation for the Board members to review to determine if the firm is complying with the peer review standards. Previously the board did not receive this amount of information.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow the Board to be better in-

formed as to the status of every public accounting firm in the peer review program and if the firm is complying with the requirements of that program.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the Board to develop standards to insure firms comply with the peer review program.

(d) How the amendment will assist in the effective administration of the statutes: It will allow the Board to be better informed as to the status of a firm in the peer review program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will only affect public accounting firms that issue audits reviews or compilation. It is estimated this will affect 878 firms.

(4) Provide an analysis of how the entities identified in question three (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The firms will submit a copy of the peer review report to the board which they did not have to previously. Firms that receive the lowest ranking and two consecutive second lowest ranking will be required to submit more documentation to the board. The board will then review this documentation to determine if any further action needs to be taken against the firm.

(a) List the actions that each of the regulated entities identified in question three (3) will have to take to comply with this administrative regulation or amendment: Only those firms that perform audits, reviews or compilations will be required to comply with this new requirement. All firms will have to submit a copy of their most recent peer review report which they receive every three years. Only the firms that received the lowest and second lowest ratings consecutively will be required to submit additional documentation to the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of mailing the documents to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question three (3): The benefit accrues to the protection of the public who use theses firms by the Board members deciding if firms with low ratings should still be able to provide an audit, review or compilation to the public.

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

(a) Initially: Nothing

(b) On a continuing basis Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding is required. The Board operates solely on its trust and agency account.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied since all CPA firms who perform audits, reviews or compilations will be required to comply with these 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?

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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?

(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?

(c) How much will it cost to administer this program for the first year?

(d) How much will it 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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO. KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315 050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an apprentice program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. (1) An applicant for registration as a pharmacist intern shall register with the board by filing an "Application for Registration as a Pharmacist Intern" form with the board. The applicant shall attach a recent head and shoulders photograph, that is not a proof copy or plastic identification.

(2) Prior to registration, an applicant shall have:

(a) Been accepted by a college or school of pharmacy approved by the board; and

(b) Submitted proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. (1) An applicant for examination for licensure as a pharmacist shall have completed 1,500 hours of internship.

(2) Credit for internship shall be awarded for hours worked in a pharmacy or in related research during the time the pharmacist intern is completing the academic coursework. Credit shall not be awarded for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing clinical rotations.

(3) Credit for internship shall be limited to:

(a) Forty-eight (48) hours per week if the pharmacist intern is not actively enrolled in a college or school of pharmacy;

(b) Twenty (20) hours per week if the pharmacy intern is actively enrolled in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours.

(4)(a) Credit shall be given for the following forms of internship:

1. Completion of an academic experience program;

2. Work performed in a pharmacy under the supervision of a preceptor; or

3. Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a govern-

ment body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board The maximum credit allowed for this time shall be 400 hours.

(b) An internship performed outside of Kentucky shall be credited if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing.

(5) Credit shall not be awarded for internship completed prior to registration with the board.

Section 4. (1) A pharmacist intern shall be issued a "Registration Identification Card".

(2) A pharmacist intern shall:

(a) Carry the "Registration Identification Card" when on duty; and

(b) Show it upon request to a member of the board or its authorized agent.

Section 5 (1)(a) Except as provided by paragraph (b) of this subsection, the registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

1. Currently enrolled in a college or school of pharmacy approved by the board;

2. A current applicant for licensure as a pharmacist in Kentucky; or

3. Awaiting the results of an examination.

(b) The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

1. The intern is on a semester break, or

2. Personal or family health concerns or other reasons beyond the control of the pharmacist intern that necessitates a temporary absence from enrollment.

(2) A person who is not registered as a pharmacist intern shall not:

(a) Hold himself out as a pharmacist intern; or

(b) Perform the duties of a pharmacist intern.

Section 6. [~~(1) Until July 31, 2000, a preceptor shall be a pharmacist who has been licensed by the board for at least one (1) year.~~]

(1)[~~(2)~~] Beginning August 1, 2000, a preceptor shall be a pharmacist who:

(a) Has been licensed by the board for at least one (1) year; and

1. Is a community-based faculty member of a [~~the~~] college or school of Pharmacy approved by the board [~~of the University of Kentucky~~]; or

2. Meets the standards established by a [~~the~~] college or school of Pharmacy approved by the board [~~of the University of Kentucky~~] for a community-based faculty member.

(2)[~~(3)~~] A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his internship.

(3)[~~(4)~~] The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 7. (1) Within ten (10) days of beginning an internship, a pharmacist intern shall submit a "Pharmacist Preceptor's Affidavit".

(2) On or before October 1 of each year of an internship, a pharmacist intern shall submit an "Internship Report". A pharmacist intern who performs work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmaceutical business, or other entity shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy.

(3) An academic experience program shall be reported on an "Academic Experience Affidavit, Form IV" which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 8. Credit for Academic Experience Programs. [~~(1) The maximum number of hours of internship credit for completion of an academic experience program shall be:~~

~~(a) 710 hours for a Bachelor of Science in Pharmacy; or~~

~~(b) 960 hours for a Doctor of Pharmacy~~]

(1)[~~(2)~~] For a Doctor of Pharmacy degree received after January 1, 2001, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration as a Pharmacist Intern Form 1 (5/99);

(b) "Registration Identification Card";

(c) "Pharmacist Preceptor's Affidavit Form 2 (5/99)";

(d) "Internship Report form (9/99)"; and

(e) "Academic Experience Affidavit, Form IV (5/99)".

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4 30 p.m.

PETER ORZALI, JR, President

APPROVED BY AGENCY: October 9, 2007

FILED WITH LRC: October 11, 2007 at 8 a.m.

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 4:30 p.m. November 16, 2007, five (5) 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 4:30p.m. November 30, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative 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 for the registration of pharmacist interns.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315 050

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for registration of pharmacist interns.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes This regulation will set the requirements for registering pharmacist interns.

(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 change will allow pharmacist interns enrolled in a

school or college of pharmacy located in this state to obtain internship credit.

(b) The necessity of the amendment to this administrative regulation: This regulation change is necessary because new schools or colleges of pharmacy may open in the state.

(c) How the amendment conforms to the content of the authorizing statutes: This change to the regulation is authorized by KRS 315.050.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Board in awarding internship credit to students that attend colleges of pharmacy in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that at least seventy-five (75) college of pharmacy students (pharmacist interns) will be affected by this annually.

(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 pharmacists interns will be able to obtain internship credit.

(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): Students that attend an accredited college of pharmacy in Kentucky will be able to obtain internship credit.

(5) 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.

(6) 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.

(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 required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacies that utilize an automated medication system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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 315.050 and KRS 315.191(a) 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 to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290 (4), 322.290 (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 gives the board the authority to set license fees. This administrative regulation establishes fees for examination, licensure, reinstatement, verification, reissuance, and renewal.

Section 1. Examination Fees. (1) The fees for taking the Principles and Practice of Engineering Examination, the Principles and Practice of Land Surveying Examination, the Fundamentals of Engineering Examination, the Fundamentals of Land Surveying Examination, and the Structural II Examination shall be the actual amounts charged by the National Council of Examiners for Engineering and Surveying.

(2) The board shall reimburse examination fees for successfully completing:

(a) Any examination listed in subsection (1) for active members or veterans of the Armed Forces of the United States. Application for reimbursement shall be made in writing to the board and include proof of passing the examination and of service in the Armed Forces of the United States.

(b) The Fundamentals of Engineering Examination or the Fundamentals of Surveying Examination for students currently enrolled in a Kentucky university or college on the date the examination was taken. Application for reimbursement shall be made in writing to the board and include proof of passing the examination and of enrollment in a Kentucky university or college on the date the examination was taken.

Section 2. Initial Licensure, Reciprocity, Renewal, Reinstatement, Reissuance, and Verification Fees. (1) [~~Verification of licensure is ten (10) dollars.~~

~~(2)~~] Renewal of an individual license is $150 and is twenty (20) dollars for retired or inactive status.

(a) Licensees whose surnames begin with the letters A through K shall renew in odd-numbered years.

(b) Licensees whose surnames begin with the letters L through Z shall renew in even-numbered years.

(2)[~~(3)~~] (a) The fee for reinstatement of an expired license or business entity permit that has been expired for less than one (1) year shall be calculated as provided by KRS 322.160 (3).

(b) If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall file an application for reinstatement and pay a fee of $500.

(3)[~~(4)~~] Reissuance of a license after loss or destruction is twenty-five (25) dollars.

(4)[~~(5)~~] The fee for licensure by reciprocity as a professional engineer or professional land surveyor shall be $300. The fee shall accompany the application for licensure.

(5) [~~(6) (a) Applicants whose surnames begin with the letters A through K who are initially licensed in.~~

~~1. An even-numbered year shall not pay an initial license fee, or~~

~~2. An odd-numbered year shall pay an initial license fee of seventy-five (75) dollars.~~

~~(b) Applicants whose surnames begin with the letters L through Z who are initially licensed in:~~

~~1. An odd-numbered year shall not pay an initial license fee; or~~

~~2. An even-numbered year shall pay an initial license fee of seventy-five (75) dollars.~~

~~(7)~~] An applicant who fails the two (2) hour state specific examination on the first attempt shall be charged fifty (50) dollars for each subsequent attempt.

Section 3. Fees for Examination and Licensure in Additional Disciplines. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines of engineering for which he has not been licensed.

(2) For each discipline of engineering he shall submit an:

(a) Updated application; and

(b) Examination fee as specified in this administrative regulation.

[~~(3) Upon successful completion of an examination, he shall submit ten (10) dollars for each addition of a new discipline.~~]

Section 4 Business Entities. (1) The fee for a permit to practice engineering or land surveying in this state shall be $100 for either permit.

(2) A business entity which applies for a dual permit shall submit $150.

(3) These fees shall accompany the application.

(4) The annual renewal fee for an individual permit shall be $100.

(5) The annual renewal fee for a dual permit shall be $150.

Section 5. Payment of Fees. (1) (a) Fees payable under Section 2 of this administrative regulation shall be paid by check or money order made payable to "Kentucky Board of Licensure".

(b) Fees payable under Section 1 of this administrative regulation shall be paid directly to the examination service.

(2) All fees are nonrefundable.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure to Practice Professional Engineering (1999)";

(b) "Application for Licensure to Practice Professional Land Surveying (2000)";

(c) "Professional Reference Form (2000)"; and

(d) "Report of Professional Experience (2000)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, or by downloading from the board's web page at http://kyboels.ky.gov[state.ky.us].

B DAVID COX, Executive Director

APPROVED BY AGENCY: October 15, 2007

FILED WITH LRC: October 15, 2007 at Noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007 at 2 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This proposed regulation removes three (3) fees which are no longer necessary. It also adds one fee for retired/inactive status required by 201 KAR 18:210 Section 2(1), which was omitted from this regulation due to an error.

(b) The necessity of this administrative regulation: KRS 322.100 requires the board to establish fees by administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. The regulation establishes the fees as required by KRS 322.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes all fees so that the board will charge the appropriate amount for each item.

(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 remove the ten (10) dollar fee for verification of a license; the $75 initial license fee; and the ten (10) dollar fee for the addition of a new discipline. It will add language regarding the twenty (20) dollar fee for retired/inactive status, which is required by 201 KAR 18:210 Section 2(1). This item was omitted from a previous amendment of this regulation due to an error.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary to correct a previous error regarding the twenty (20) dollar retired/inactive status fee and to remove three (3) fees no longer needed.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment deals with fee changes which KRS 322.100 authorizes the board to establish.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will update and correct the current list of fees which will allow the board to charge the appropriate amount for each item.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will reduce fees for potential licensees.

(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 board will continue to administer fee regulation. No other regulated entities are affected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to individual potential licensees will decrease. The fees to the board will decrease by approximately $20,000 per year. There will be no costs to any other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This proposed amendment will reduce the total fees for potential licensees and therefore may encourage more to seek licensure.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

a. Initially: $0

b. On a continuing basis: $20,000 less in collected fees annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal 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 funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this proposed regulation. In fact, fees are reduced.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.100.

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. Fees received by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors will decrease by approximately $20,000 with no effect on expenditures. There are no revenue or expenditure effects for the other government agencies.

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

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

(c) How much will it cost to administer this program for the first year? $0

(d) How much will it cost to administer this program for subsequent years? $0

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 State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:072. Experience.

RELATES TO: KRS 322.040, 322.045, 322.047

STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.045(3), 322.047(2), 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040(4), 322.045(3), and 322.047(3) provides that the board shall promulgate administrative regulations to establish requirements for consideration of experience gained prior to graduation from programs as described in the statute. This administrative regulation establishes these requirements.

Section 1. Evaluation of experience in engineering required under KRS 322.040 shall consider the following:

(1) Experience shall reflect increasing complexity of the engineering tasks and the progressive responsibility of the applicant.

(2) The applicant shall demonstrate knowledge of engineering mathematics, physical and applied sciences, properties of materials, the fundamental principles of engineering design and the application of engineering principles in the solution of engineering problems.

(3) [~~A maximum of six (6) months of credit may be approved for experience completed prior to graduation under KRS 322.040, (1)(a)1.~~] One (1) year of credit may be approved for completion of a master's degree in engineering in an EAC/ABET-accredited program, or one deemed equivalent by the board. [~~Credit shall not be granted for both experiences set out in this subsection.~~]

(4) Experience that violates KRS Chapter 322 shall not be approved.

(5) Engineering experience gained in the military services may be approved.

(6) Sales experience may be approved if engineering principles were required and used in that experience.

(7) Experience gained in teaching advanced-level engineering-related courses in a four (4) year EAC/ABET-accredited program, or one (1) deemed equivalent by the board, may be approved.

(8) Experience gained in engineering research and design projects by faculty in an EAC/ABET-accredited program, or one deemed equivalent by the board, may be approved.

(9) Experience may be approved for execution or supervision of construction projects designed by a professional engineer.

(10) The applicant shall demonstrate why experience not gained under the supervision of a professional engineer is eligible for credit.

(11) Qualifying experience shall be complete at the time of application for licensure.

Section 2. Evaluation of experience in land surveying required under KRS 322.045 and 322.047 shall consider the following:

(1) Land surveying experience shall reflect increasing complexity of the land surveying tasks and the progressive responsibility of the applicant.

(2) Experience shall include projects in which the applicant, while under the direct supervision of a practicing professional land surveyor, implemented work involving property conveyance and property boundary determination. The applicant shall also demonstrate experience in the fieldwork aspects of property boundary determination.

(3) One (1) year of experience may be approved for completion of a master's degree in land surveying from a board-approved program in land surveying from a college or university.

(4) A maximum of two (2) years of experience shall be approved for land surveying work prior to graduation under KRS 322.045(1)(c)1, 2, 3, and 322.047(1)(a)1 and 2.

(5) Experience that violates KRS Chapter 322 shall not be approved.

(6) Land surveying experience gained in the military services may be approved.

(7) A maximum of two (2) years of experience may be approved for teaching land surveying courses at the postsecondary level.

(8) Qualifying experience shall be complete at the time of application.

(9) Notwithstanding paragraphs (3), (4), and (7), in no case shall an applicant's experience gained after graduation be less than two (2) years.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: October 10, 2007

FILED WITH LRC: October 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

November 21, 2007 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the requirements for the experience component of engineering and surveying licensure.

(b) The necessity of this administrative regulation: KRS 322.040(4) and 322.045(3) requires the board to establish an administrative regulation for experience.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. The regulation establishes experience requirements per KRS 322.040(4) and 322.045(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes detailed requirements related to the experience component of engineering and surveying licensure to assist the board in evaluating applicants 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 proposed amendment will remove the six month pre-graduation engineering experience credit.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary because several states do not allow experience gained prior to graduation to be considered for licensure. Therefore, Kentucky applicants who are initially licensed in Kentucky may have difficulty becoming licensed as professional engineers in these states.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment deals with the subject of pre-graduation experience credit as required by KRS 322.040(4).

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will provide the information necessary for the board to evaluate the experience component engineering applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will affect engineering applicants who attempt to use experience gained prior to graduation.

(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 board will continue to administer the experience regulation. No other regulated entities are affected.

(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 entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This proposed amendment will remove an obstacle to certain engineers licensed in Kentucky from becoming licensed in certain other states.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this proposed amendment.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.040(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. There are no revenue or expenditure effects for any government agency.

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

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

(c) How much will it cost to administer this program for the first year? $0

(d) How much will it cost to administer this program for subsequent years? $0

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 Nursing
(Amendment)

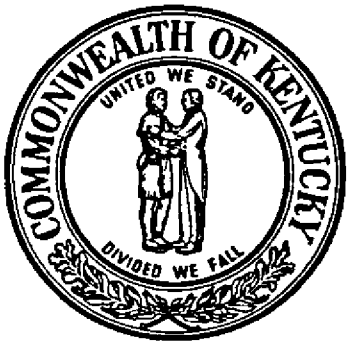
201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314 035, 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 34, NUMBER 5
THURSDAY, NOVEMBER 1, 2007

ARRS – NOVEMBER 7, 2007 TENTATIVE AGENDA 903
REGULATION REVIEW PROCEDURE 906

EMERGENCIES:
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Cabinet for Economic Development 909
Division for Air Quality 912
Cabinet for Health and Family Services 958

AS AMENDED:
Council on Postseconday Education 961
Personnel Cabinet 964
Department of Revenue 967
Governor's Office for Local Development 968
Board of Opthalmic Dispensers 968
Division for Air Quality 969
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Office of Insurance 985
Cabinet for Health and Family Services 986

AMENDED AFTER COMMENTS:
Motor Vehicle Commission 1003
Cabinet for Health and Family Services 1004

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 2007:
Education Professional Standards Board 1074
Personnel Cabinet 1091
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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet November 7, 2007 at 9 a.m. in room 149 Capitol Annex. See tentative agenda on pages 903-905 of this Administrative Register.

Part 2 of 2

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Title		Chapter	Regulation
806	KAR	50.	155
Cabinet, Department, Board, or Agency		Office, Division, or Major Function	Specific Regulation

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regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(4) "Dialysis technician trainee" means and individual who is enrolled in an approved dialysis technician training program.

(5) "Supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician, and when a patient is being dialyzed the registered nurse or physician is in the immediate clinical area

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the "Application for Dialysis Technician Credential";

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program to subsection (1)(b) of this section;

3. Pay the fee established in Section 12 of this administrative regulation;

4. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and

5. Provide to the board a letter of explanation that addresses each conviction.

(b)1. If the dialysis technician applicant [individual] has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant [An individual] who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide" as follows and shall submit evidence to the board of completion:

a. Discuss state and federal regulations governing dialysis;

b. Discuss the principles and legal aspects of documentation, communication and patient rights;

c. Discuss the roles of the dialysis technician and other multidisciplinary team members; and

d. Discuss principles related to patient safety.

4. A dialysis technician applicant [An individual] who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor.

5. An individual who has completed an out-of-state dialysis technician training program shall submit evidence of:

a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

b. Dialysis [Current dialysis] technician certification issued within the past two (2) years by the National Nephrology Certification Corporation, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4) (a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the "Application for Dialysis Technician Credential"; and

2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until.

1. The credential is issued; or

2. The application is denied by the board.

(5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine whether:

(a) The application shall be processed with no further action; or

(b) The application shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or

2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The "Application for Renewal of the Dialysis Technician Credential"; and

(b) The fee established in Section 12 of this administrative regulation

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:

(2)(a) Submitting the "Application for Dialysis Technician Credential"; and

(b) Paying the fee established in Section 12 of this administrative regulation.

(3)[(2)] If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:

(a) Completing a board-approved dialysis technician training program before submitting the "application for Dialysis Technician Credential". While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the "Application for Dialysis Technician Credential";

(c) Paying the fee established in Section 12 of this administrative regulation; and

(d) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor.

(4)[(3)] An "Application for Dialysis Technician Credential" submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

[~~(4) While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee. Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall met the requirements of this section.~~]

(5) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

Section 5. Scope of Practice. (1) The scope of practice of a

dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant or advanced registered nurse practitioner. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units.

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician.

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board; or

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the application for a credential.

(4) The board shall follow the procedures set out in and have the authority set forth in KRS 314.091, 201 KAR 20:161 and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to $10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner;

(c) Objectives. Objectives shall be stated in behavioral terms with supportive content identified;

(d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

(e) Teaching methods. The activities of both instructor and learner shall be specified These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles;

(f) Instructional or reference materials. All required instructional reference materials shall be identified; and

(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes There shall also be a process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be

clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. The final examination shall be administered only during the final forty (40) hours of the training program. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records are maintained. At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) working days of the program completion date.

(12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closing, a copy of the program trainee roster from the date of the last renewal to the date of closing, the location of the program's records as defined in subsection (9) of this section, and the name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board and the program shall meet the requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval";

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) and (5) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

Section 12. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be seventy (70) dollars.

(4) The dialysis technician training program initial approval fee shall be $950.

(5) The dialysis technician training program continued approval fee shall be $800.

(6) The dialysis technician training program reinstatement fee shall be $950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of $150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) [~~thirty-five (35)~~] dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician shall be deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within thirty (30) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime. Upon learning of any failure to notify the board under this provision, the board may initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or revoked, or if renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates Upon failure of the person to submit to a chemical dependency evaluation or a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given consent to submit to a chemical dependency evaluation of a mental or physical examination when so directed in writing by the board. The direction to submit to an evaluation or an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining practitioner's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any chemical dependency evaluation or mental or physical examination ordered by the board.

Section 14. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/06;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 9/07 [~~7/04~~];

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 9/07 [~~7/04~~];

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/07 [~~7/04~~];

(e) "Dialysis Technician Training Program Guide" (August 14, 2001), Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/07 [~~7/04~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p m.

JIMMY ISENBERG, President

APPROVED BY AGENCY. August 29, 2007

FILED WITH LRC: October 4, 2007 at 9 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on November 26, 2007, at 1 p.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 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. A transcript of the public hearing will not be made unless a written request for a transcript is made If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business November 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets credentialing requirements for dialysis technicians and standards for dialysis technician training programs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements and standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements and 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. The amendments make several changes to requirements for dialysis technicians. A definition of supervision has been added. Updated procedures for those people who were trained in out of state programs have been added. Reinstatement requirements have been clarified. Certain training standards, such as when the final examination is to be given, have been updated. Several application forms have been updated.

(b) The necessity of the amendment to this administrative regulation: The Board constantly strives to insure that its requirements are fair and reasonable and address applicable issues with dialysis technician credentialing and training.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate requirements and standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate requirements and standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Dialysis technician applicants, number unknown. Dialysis technician training programs, currently there are 13 in the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the new requirements and standards set by this administrative regulation. For example, dialysis technician applicants that were trained out of state will have to provide additional information.

(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 there will be any additional cost to dialysis technician applicants or training programs as a result of these amendments.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): They will be in compliance with the requirements and standards set by the Board. The public will be better served by compliance with these updated requirements and standards.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: The fee for verification of a dialysis technician credential has been lowered from $35-$10. A new fee of $35 for a name change and issuance of a new credential has been added.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.035 and 314.137.

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? It will generate no revenue for the state in general. It may generate some revenue for the Board of Nursing through the new fee, but it is impossible to estimate the amount.

(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? It will generate no revenue for the state in general. It may generate some revenue for the Board of Nursing through the new fee, but it is impossible to estimate the amount.

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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
Board of Physical Therapy
(Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 327.010(1), (2), 327.070
STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means the number of hours spent participating in an activity.

(2) "Continued competency" means a planned learning experience relating to the scope of physical therapy practice in KRS 327.010(1), whether the subject is intervention, examination, research, documentation, education, or management of health care delivery systems

(3) "Practice in the field of physical therapy" means direct patient care, management of patient care, research, or teaching in a physical therapy educational program.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than ten (10) hours may be earned from Category 2 described in subsection (3) of this section.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;

2. At least ten (10) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than eight (8) hours may be earned from Category 2 described in subsection (3) of this section.

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia or home study courses consisting of at least three (3) contact hours that have been approved by board, the board's designee, APTA or its components, or any other physical therapy licensing agency [~~KSBPT or its designee~~],

(b) Completion or auditing of an accredited postsecondary educational institution credit course

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed, and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by KSBPT or its designee;

(d) Authorship of a presented scientific poster, scientific platform presentation or published article undergoing peer review, but not more than ten (10) contact hours per event with a maximum of two (2) events per biennium,

(e) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder, but not more than twenty (20) contact hours per biennium;

(f) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(g) Completion of a clinical residency program, but not more than five (5) contact hours for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(h) Engaging in the practice of physical therapy as defined by KRS 327.010(2) at least 1000 hours per biennium. Five (5) contact

hours shall be awarded per biennium;

(i) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(j) Election or appointment to a position of the KPTA, APTA or Federation of State Boards of Physical Therapy (FSBPT) as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(k) Member of a committee or task force for one (1) of the organizations in Section 2(2) paragraph (i) or (j) of this administrative regulation. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel or symposium One (1) contact hour for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE approved educational program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy inservice or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Participation in community service related to health care. A maximum of two (2) contact hours Continued competency shall be awarded for two (2) hours per biennium; or

(f) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities satisfactory to the board; and

(c) Any licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities may be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee may be granted a temporary hardship exemption or an extension of time based upon application and a showing satisfaction to the board of undue hardship by reason of the licensee's age, disability, medical condition, financial condition, or other clearly mitigating circumstances, and which shall not exceed one (1) renewal cycle. Temporary Hardship Exemption or Extension Form 1.

(b) A licensee may be granted a temporary non hardship extension of time if the licensee cannot show undue hardship and if the licensee:

(1) Files an application and pays a fee of $250 for a temporary nonhardship extension of time by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

(2) Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

(3) Files proof of compliance with the continuing competency requirements by the following July 1. Temporary Nonhardship Extension Form 1.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: September 20, 2007

FILED WITH LRC: October 11, 2007 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007 at 9 a.m. (EST) at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502) 429-7140, fax (502) 429-7142

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation assist in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

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

(a) How the amendment will change this existing administrative regulation: It clarifies the approval process of continued competency and allows for an exemption or extension of the requirements.

(b) The necessity of the amendment to this administrative regulation. The necessity is to clarify the course approval process and allows for an extension or exemption of the continued competency requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,000.

(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 credential holders are required to show competency during the biennial renewal period and the amendment clarifies those requirements.

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

(c). As a result of compliance, what benefits will accrue to the entities identified in question (3): It will allow for a hardship extension or exemption.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs are minimal for implementing and enforcing this amendment and will be funded by licensure fees paid by licensees.

(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 regulation does not change the fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Board of Physical Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(10)

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? No new costs is anticipated.

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

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

GENERAL GOVERNMENT CABINET
Kentucky State Board for Proprietary Education
(Amendment)

201 KAR 40:020. Standards for approval of Associate Degree Programs [~~Award~~].

RELATES TO: KRS 165A.310(5)[~~(4)~~], 165A.370(1)[~~(e)~~]
STATUTORY AUTHORITY: KRS 165A.330(1), (2), 165A.340(3), (7), 165A.360(1), (2), (7), 165A.400
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370 requires that no school shall be issued a certificate of approval until the Board shall have determined the school is in compliance with minimum standards leading to the awarding of an associate degree which indicates the satisfactory completion of a program [~~course~~] of study. This administrative regulation establishes the requirements for a school to award an associate degree.

Section 1. General Standards. (1) A school requesting consideration for approval to award an associate degree shall:

(a) [~~Any institution desiring to offer an associate degree must~~] have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the application;

(b) [~~and~~] Accredited by an [~~a nationally recognized~~] accrediting agency recognized as such by the United States Department of Education; [~~appropriate federal agency~~]

(c) Meet the standards set forth in KRS 165A.370 and this administrative regulation; [~~(2) Institutions seeking to award associate degrees shall offer the degree in accordance with all administrative regulations and requirements of the board.~~]

(d) File a completed, signed, and dated "Application to Award an Associate Degree" (Form PE-10) with the board; [~~(3) An institution shall clearly define its philosophy and objectives within the requested associate degree program and incorporate these definitions into a written statement.~~]

(e) Pay the fee for application to award an associate degree set forth in 201 KAR 40:025, Section 8; [~~(4) An institution shall clearly determine the potential job market availability for graduates of the associate degree program.~~]

(f) Ensure that marketing techniques and advertisements shall not guarantee employment, and [~~(5) The school may not offer to the public, advertise or enroll students in a new associate degree program until all necessary forms have been submitted to the board office for review and written authorization to initiate these activities received from the board office. At that time, an on-site visit of the proposed new degree program will be scheduled prior to the degree application being submitted to the full board for action. No classes in the program may commence before final board approval.~~]

(g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the board office for review, and written approval of the application is received from the board; [~~(6) If approval of the new degree program is granted, a second full-site visit will occur normally within sixty (60) days of the start of the first class. Expenses for all visitations will be borne by the institution.~~]

(h) Be inspected by a member of the board or board designee with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.

(2) No classes in the program shall commence before the inspection report evidences that the program is in compliance.

Section 2. Associate of Arts Degree or Associate of Science Degree. (1) The granting of associate of arts degree or associate of science degree is limited to a school accredited by an [~~accredited junior colleges accredited as such by a nationally recognized~~] accrediting agency recognized as such by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree may be awarded to [~~conferred upon~~] a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study. Of the total credit hours, [~~credits~~] a minimum of thirty (30) semester credit [~~standard~~] hours, or forty-five (45) [~~the equivalent~~] quarter credit hours, shall be in the appropriate business, technical or other major field of study as indicated in the program [~~course~~] title and description. A minimum of fifteen (15) [~~standard~~] semester credit hours, or twenty-two and one-half (22 1/2) [~~the equivalent~~] quarter credit hours, shall be required in general education studies [~~subjects~~]. General education studies shall include courses other than the core major offering and shall offer balance to the total program.

(3) At least one-half (1/2) of those subjects which are part of the curriculum in an associate of arts degree or an associate of science degree program [~~programs~~] shall be taught by faculty members possessing related graduate degrees, including, but not limited to, M.A., M.S., or M.B.A., or professional degrees, including, but not limited to, [~~professional certification such as~~] J.D., or M.D., or baccalaureate degrees plus professional certification including, but not limited to, [~~such as~~] CPA, P.E., or R.N. An exception to the requirement of an advanced degree may be justified for instructors of subjects in areas which are not normally academically credentialed or which are not normally credentialed with graduate degrees.

Section 3. Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an [~~the~~] associate of applied science degree or associate of occupational studies de-

gree is limited to schools accredited by an accrediting agency recognized as such by the U S Department of Education, [a nationally recognized accrediting agency or association recognized by the appropriate federal agency] as a business or specialized school.

(2) The associate of applied science degree or associate of occupational studies degree shall [may] be awarded to [conferred upon] a student who has successfully completed a degree [an approved course of study in a] program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours [of credit]. These degrees do [This degree does] not require the inclusion of general education studies courses, but general education studies courses may be a part of the program.

(3) Faculty qualifications shall require that a minimum of a baccalaureate degree is held by faculty, or, that faculty possess the following alternate competency:

(a) Professional [recognition in the specialized subject area indicated by] licensure or certification in the specialized area or in a related specialized area; or[.]

(b) Postsecondary education or training, plus at least two (2) years of documented practical experience in the specialized area or in a related specialized area [specialty].

Section 4. Additional Standards. (1) Additional standards applicable to all associate degree [award] granting schools [institutions] approved by this board include:

(a) The library [holdings] or learning resource center items [material] shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which are appropriate for the program offered.

(b) The library or learning resource center shall [must] be accessible for all students to use the items [materials] and shall [must] provide access to [check out opportunity of] materials at hours other than when classes are being taught.

(c) A designated [There shall be a] staff member shall be [designated as] responsible for the library or learning resource center and sufficient funds [an adequate annual budget] for support of the facility and acquisition [acquisitions] of library or learning resource center items shall [materials must] be provided. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered [and approved] and shall be in sufficient quality and quantity to accommodate the current [maximum] student enrollment. [The maximum enrollment shall be determined by available instructional space and qualified instructional personnel.]

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered. [The board shall provide a review of the program by a professional knowledgeable within the field being considered.]

(f) A catalog shall be printed containing a description for each course that is required or which can be taken to meet the requirements for the degree. The catalog shall include any and all prerequisites. [The institution shall provide a listing of the course requirements for the degree and any and all prerequisites required.]

(g) All promotional literature and advertising shall appropriately identify the degree offered. [There shall be printed in an appropriate document a course description for each course that is required or which can be taken to meet the requirements for the degree and all other promotional literature used shall appropriately identify the correct title of the degree offered and advertised.]

(h) A completed "Form for Instructional Staff and Key Administrative Personnel" (Form PE-11) for each instructor shall be submitted to the board before classes listed on the application begin. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor [of faculty teaching] in the degree program shall be maintained on file at the school [institution and shall accompany any application for approval, where applicable].

(i) The school [institution] shall maintain [have] on file a [an appropriate and] current course syllabus for each course [subject] taught.

(j) The school [institution offering degrees] shall maintain on file for [provide] the board or its designee [evaluators with] a copy of its [their] last accreditation self-study and [all] correspondence with accrediting agencies.

(2) The school shall [applicant institution must] make the following materials available to a member of the board or its designee [the team of evaluators] at the time of the on-site visit:

(a) Promotional literature [School catalog];

(b) School catalog [Promotional literature used in program];

(c) Course syllabi [Inventory of classroom equipment];

(d) Inventory of classroom equipment [Faculty files];

(e) Student files [Course syllabi];

(f) Faculty files [Copy of standard student file];

(g) Staff files [Copy of standard personnel files];

(h) A list of all personnel by position indicating part-time and full-time employees [Total enrollment by program as of last start date]; and

(i) Organizational chart [; and

(j) A list of all personnel indicating part-time and full-time employees.]

Section 5. Revision of an Existing Associate Degree Program. (1) Written notification detailing cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered) or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period shall be submitted to the Board on a "Notification to Revise an Existing Program for Less Than 25%" (Form PE-12). A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.

(2) A school licensee shall submit an "Application to Revise an Existing Program for 25% or More" (Form PE-13) for approval by the Board if cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered) or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period. A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the Board in writing of program name changes, course name changes, or course description changes.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application to Award an Associate Degree", Form PE-10, 2007 edition;

(b) "Form for Instructional Staff and Key Administrative Personnel", Form PE-11, 2007 edition;

(c) "Notification to Revise an Existing Program for Less Than 25%", Form PE-12, 2007 edition; and

(d) "Application to Revise an Existing Program for 25% or More", Form PE-13, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board for Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

DR. STEPHEN COPPOCK, Chair
ROBERT M. BURNSIDE, Secretary

APPROVED BY AGENCY: September 6, 2007

FILED WITH LRC: September 20, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007, at 9 a.m., at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards for a proprietary education school to award an Associate Degree.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to set forth the minimum standards for a proprietary education school to award an Associate Degree and apprise the schools of the requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to make all rules and regulations as may be necessary to carry out the provisions and purposes of KRS Chapter 165A pursuant to 165A 340(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the board to establish criteria for determining whether a proprietary education school qualifies to issue an Associate Degree. Said detailed criteria provide additional clarity for applicants and better information to assist the board in its decision-making.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation updates the minimum standards for a proprietary education school to award an Associate Degree taking into account information that will be required by separate accrediting agencies and addressing issues such as staffing, program requirements and promotional materials.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to update the minimum standards for a proprietary education school to award an Associate Degree. It has been several years since this administrative regulation has been updated and industry standards and requirements have changed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting forth the minimum standards for a proprietary education school to award an Associate Degree and thus enabling the board to carry out its charge to review and issue licenses to proprietary schools.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will clearly define and set forth standards for the board to apply to determine whether a proprietary education school qualifies to issue an Associate Degree. The additional clarity will reduce the number of applications which are found to be deficient or incomplete, reduce the number of inquires to the board and improve the overall quality of information which the board relies upon to make its decisions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No more than approximately 50 proprietary education schools which offer or request to offer an Associate Degree.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The proprietary schools who are already in existence who wish to award associate degrees are required to complete an "Application to Award an Associate Degree" Form PE-10. This form requests detailed information regarding accreditation, job market analysis, facility description, and costs associated with the program. Applicants are also required to complete a "Form for Instructional Staff and Key Administrative Personnel" Form PE-11 which provides details regarding the staff's education and experience. Applicants who are revising an existing program are required to analyze the proposed changes to determine the percentage of change which has occurred to the approved program over the course of the last twelve (12) months and complete either the "Notification to Revise an Existing Program for Less than 25%" Form PE-12 or the "Application to Revise an Existing Program for 25% or More" Form P-13.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amount of administrative time it will cost each entity to assemble the requested information will vary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended administrative regulation will assist schools in meeting the requirements of the Board to qualify to issue an Associate Degree. All forms which are required to be completed by the applicants have been reviewed and revised and incorporated by reference in an attempt to simplify the process. The result is a request for more relevant information in a more efficient and understandable manner.

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

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

(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 licensees and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish any increase in fees either directly or indirectly. The process for application to award an associate degree has been in place for many years.

(9) TIERING. Is tiering applied? Tiering was not applied as the criteria apply equally to all proprietary education schools which request permission to award an associate degree.

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 State Board for Proprietary Education.

3.Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.330(1), (2), 165A.340(3), (7), 165A.360(1), (2), (7), 165A.400.

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 gen-

erate 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

GENERAL GOVERNMENT CABINET
Kentucky State Board for Proprietary Education
(Amendment)

201 KAR 40:030. Procedures for hearings.

RELATES TO: KRS 165A.350(3)(b), 165A.360(3)(b), 165A.370(2)-(4) [~~KRS Chapter 165A~~]

STATUTORY AUTHORITY: KRS Chapter 13A, 165A.350(4)(b), 165A.360(3)(b), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.100 requires an administrative body which is empowered to promulgate administrative regulations to prescribe the procedures to be utilized in the conduct of hearings unless the procedures are prescribed by statute. KRS 165A.340(3) and 165A.400 authorize the board to promulgate administrative regulations. KRS 165A.350(4)(b), 165A.360(3)(b), and 165A.370(4) provide for hearings, but do not prescribe procedures. This administrative regulation establishes hearing procedures.

Section 1. Definitions. (1) "Chair" means the chair or vice-chair of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in Section 5(3) of this administrative regulation issued by the board alleging a violation of a specified provision of KRS Chapter 165A or the administrative regulations promulgated thereunder.

(3) "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the administrative regulations promulgated thereunder, or another state or federal statute or regulation applicable to an agent or school.

(4) "Complaint committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests a court to take action.

(6) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General for the board. [~~Purpose and Rule of Construction. The purpose of this administrative regulation is to enable the state Board for Proprietary Education to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee, applicant and students. Accordingly, this administrative regulation shall be liberally construed so as to aid that process.~~]

Section 2. Complaint Committee. The complaint committee shall:

(1) Be appointed by the chair of the board to:

(a) Review complaints and investigative reports;

(b) Participate in an informal proceeding to resolve formal complaints; and

(c) Make recommendations for disposition of complaints to the full board.

(2) Consist of three (3) persons who may be assisted by the board staff and counsel to the board. [~~Composition of the Hearing Panel. (1) Disciplinary actions shall be heard by a hearing panel consisting of three (3) members of the board and a hearing officer appointed by the board.~~

~~(2) A board member who has participated in the investigation of a disciplinary action, or who has discussed the merits of an action with the agency staff, or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit on a panel hearing that particular action.~~

~~(3) Staff members of the board, legal counsel for the board and a court stenographer shall be present for the hearing.~~]

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity. A complaint shall be in writing and shall be signed and certified as to its truth by the person offering the complaint. The board may file a complaint based on information in its possession. A complaint may be filed with the board on Form PE-24, "Form to File a Complaint," accompanied by Form PE-25, "Authorization for Release of Student Records".

(2) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint. The agent or school shall file a written response with the board within ten (10) days from the date of receipt.

(3) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant. The complainant shall have ten (10) days from the date of receipt to submit to the board a written reply.

(4) Upon receipt of the complainant's reply, the complaint committee may request an additional response from the agent or school regarding additional issues raised. [~~Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be heard by the hearing panel, to be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements.~~]

Section 4. Initial Review. (1) After the receipt of a complaint, or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and complainant's reply to the response, and other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If, in the opinion of the board, a complaint does not warrant the formal investigation of a complaint against an agent or school, or the issuance of a formal complaint against an agent or school, then the board shall dismiss the complaint and shall notify both the complainant and the agent or school of the board's decision.

(3) If, in the opinion of the board, a complaint warrants a formal investigation against either an agent or school, then the board shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity. [~~Pre-hearing Disclosure of Evidence. (1) By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and phone numbers of witnesses expected to be called by the board and copies of documentary evidence intended to be introduced at the hearing shall be furnished to the licensee or applicant, or his attorney if represented by counsel, at least ten (10) days prior to the scheduled hearing date. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators, nor shall it be construed as allowing access to the work product of legal counsel for the board. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.~~

~~(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date, the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.~~

~~(3) At least the (10) days prior to the scheduled hearing date,~~

~~the licensee or applicant shall file with the board a sworn written response to the specific allegations contained in the notice of charges. Allegations not answered or denied shall be deemed admitted. The panel may for good cause permit the late filing of an answer.~~

~~(4) Sanctions for failure to comply with prehearing disclosure. If a party fails to comply with this section, the panel hearing the disciplinary action may refuse to allow into evidence the items or testimony that have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make other orders as it deems appropriate. Sanctions shall be applied by the board members of the panel.~~

~~(5) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.~~

~~(6) Authority to issue subpoenas. The board or the hearing officer appointed by it shall have the authority to issue subpoenas for the attendance of witnesses and the production of papers and records.~~]

Section 5. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of a formal investigation, the complaint committee shall consider the facts regarding the complaint. The committee shall review an investigative report, and supporting documents, and make a recommendation to the board. The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a formal complaint shall be filed.

(2) If, in the opinion of the board, a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, then the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complainant and the agent or school of the outcome of the complaint.

(3) If, in the opinion of the board, a complaint warrants the issuance of a formal complaint against an agent or school, then a formal complaint which states clearly the charge or charges to be considered at the hearing shall be prepared. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the agent or school as required by KRS 13B.040.

(4) If, in the opinion of the board, an individual or school may be operating without the appropriate permit or license, then the Board may:

(a) Authorize the board administrator to send a letter to the individual or school advising them that they may need a permit or license, and enclose the appropriate application package;

(b) Authorize board counsel to issue a letter ordering that individual or school to cease and desist from operating the school;

(c) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(d) Initiate action in Franklin Circuit Court for injunctive relief.

[~~Order of Proceeding. (1) The hearing officer shall call the meeting to order, identify the parties to the action and the persons present and read the letter of notice and charges. The hearing officer shall ask the parties to state for the record any objections or motions. The board members of the panel shall rule upon any objections or motions. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.~~

~~(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Witnesses shall be examined first by the attorney for the board, then by the licensee or applicant, or his attorney if represented by counsel, and finally by members of the hearing panel. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.~~

~~(3) Upon conclusion of the case for the board, the licensee or applicant shall call his witnesses. The witnesses shall be examined first by the licensee or applicant, or his attorney if represented by counsel, then by the attorney for the board, and finally by the members of the hearing panel. Rebuttal examination of these witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.~~

~~(4) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.~~

~~(5) The hearing officer shall enforce general rules of conduct and expedite the hearing by keeping the testimony and exhibits relevant to the case.~~]

Section 6. Settlement by Informal Proceedings and Letter of Admonishment. (1) The board, through counsel and the complaint committee, may enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(a) An agreed order or settlement reached through this process shall be approved by the board and signed by the agent or school which is the subject of the complaint, and the chairman.

(b) The board may employ mediation, persuasion or conciliation, as methods of resolving the matter informally.

(2) (a) The board may issue a written admonishment to the agent or school if in the judgment of the board:

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the agent or school to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the agent or school.

(c) Within thirty (30) days of receipt of an admonishment, the agent or school shall file:

1. A response to the admonishment which shall be placed in the agent's or school's permanent licensure file; or

2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment, file a formal complaint, and set the matter for hearing pursuant to the provisions of KRS Chapter 13B. [~~Rules of Evidence. (1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and shall be authenticated only to the extent that the panel is satisfied as to its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.~~

~~(2) The panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the board members of the panel.~~]

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

(a) "Form to File a Complaint", Form PE-24, (2007 edition); and

(b) "Authorization for Release of Student Records", Form PE-25, (2007 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [~~Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for the purpose of deliberations. Each board member of the panel shall have one (1) vote.~~

~~(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed decision including findings of fact and conclusions of law consistent with the panel's deliberations and a~~

~~recommended order to be submitted to the full board. A copy of the proposed decision shall be sent to the licensee or applicant, or his attorney if represented by counsel, by certified mail, to all members of the board and to the attorney for the board.~~

~~Section 8. Written Arguments or Exceptions to a Proposed Decision. The licensee or applicant shall have twenty (20) days from the date the proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president in unusual circumstances. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board.~~

~~Section 9. Decision by the Board. (1) At the next scheduled regular meeting or as soon thereafter as may be arranged, the board shall review the proposed decision and consider the evidence presented, and, after consideration of any written arguments or exceptions which have been presented, shall make a final determination, as follows:~~
~~Adopt the proposed decision as submitted, or~~
~~(b) Modify the proposed decision as deemed necessary; or~~
~~(c) Remand the cause to the hearing panel for further evidence.~~
~~(2) If the cause is remanded, the hearing panel shall.~~
~~Schedule another hearing to obtain additional evidence; and~~
~~(b) The board shall consider the findings of fact and recommendations from the original hearing, any additional hearing and any additional written arguments or exceptions the parties have presented, and shall render its final decision in the case.~~

~~Section 10. Record to be Maintained. A transcript of the testimony taken during the hearing(s) shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing(s) shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript.~~

~~Section 11. Continuances. It is the policy of the board not to postpone cases which have been scheduled for hearings absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the board members of the panel. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.~~

~~Section 12. Copy to be Provided to Licensee or Applicant. A copy of this administrative regulation shall be provided to the licensee or applicant prior to the hearing.~~]

This is to certify that the Chair of the Kentucky State Board for Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

DR. STEPHEN COPPOCK, Chair
ROBERT M. BURNSIDE, Secretary
APPROVED BY AGENCY: September 6, 2007
FILED WITH LRC. September 20, 2007 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 20, 2007, at 12 p.m., at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner

(1) Provide a brief summary of.

(a)What this administrative regulation does: This administrative regulation establishes hearing procedures to be utilized in the event a complaint is received concerning a licensed proprietary school or agent. KRS 13A.100 requires an administrative body which is empowered to promulgate administrative regulations to prescribe the procedures to be utilized in the conduct of hearings unless the procedures are prescribed by statute. KRS 165A.340(3) and 165A.400 authorize the board to promulgate administrative regulations. KRS 165A.35094)(b), 165A 360(3)(b), and 165A 370(4) provide for hearings, but do not prescribe procedures.

(b)The necessity of this administrative regulation: The necessity of this administrative regulation is to place licensees on notice of the procedures that will be followed in the event a complaint is filed against them. The regulation also provides essential information to the public to increase their understanding of the process.

(c)How this administrative regulation conforms to the content of the authorizing statutes The board is given the authority by statute to promulgate administrative regulations and to hold administrative hearings. This administrative regulation establishes the procedures for handling complaints which may result in disciplinary action against a licensee.

(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 proprietary school or agent.

(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 administrative hearing process bringing it into compliance with KRS Chapter 13B.

(b) The necessity of the amendment to this administrative regulation: It is necessary to update the regulation to bring it into compliance with KRS Chapter 13B and to inform licensees and the public of the procedures associated with an administrative complaint.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by providing more detail regarding the administrative procedures to be followed when a licensee faces a potential disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will improve knowledge and understanding of the administrative process. This knowledge will assist consumers who wish to file complaints. It will also increase the licensees' understanding of the process which should reduce the number of inquiries to board staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 140 proprietary schools and approximately 200 agents are currently licensed in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, includ-

ing:

(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 requires licensed proprietary schools and agents who are the subject of a complaint to promptly write a response and submit it to the board. In the event an investigation is conducted, said licensees are expected to fully comply with the investigators. If formal charges are filed, this administrative regulation sets forth the manner in which an administrative hearing shall be conducted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities in question (3): In the event an administrative complaint is filed, a licensee may choose to defend himself in the manner he deems most appropriate. Specifically, he may proceed pro se or hire a lawyer. Therefore, the cost will vary greatly depending upon the licensee's decision. It should be noted however, that the licensee is not required to hire legal counsel and that many licensees appear before the board pro se. Other costs which may be associated with defending a charge that could result in disciplinary action would be production of documents or witnesses and travel to the administrative hearing. These costs vary on a case by case basis and do not lend themselves to estimation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended administrative regulation will assist proprietary schools and their agents by specifying the procedures to be followed in the event a complaint is filed against them thereby increasing their knowledge and ability to defend themselves.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation, including disciplinary matters, is funded by fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensed proprietary schools and agents in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Board for Proprietary Education.

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.350(4)(b), 165A.360(3)(b), 165A.400

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

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

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150 340, 150.360, 150.603(1), 150 620

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service.

Section 1. Definitions. (1) "Dove" means mourning dove and white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.

(2) A person shall use the following time frames when hunting migratory birds:

(a) Dove beginning on:

1. September 1 for fifty-four (54) [~~forty-five (45)~~] consecutive days; and

2. Thanksgiving Day for six (6) consecutive days[.

~~3. The Saturday after Christmas for nine (9) consecutive days~~].

(b) Woodcock beginning on the third Saturday in October for forty-five (45) consecutive days.

(c) Common snipe beginning on:

1. The third Wednesday in September for forty-seven (47) consecutive days; and

2. Thanksgiving Day for sixty (60) consecutive days.

(d) Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia and sora rails, common moorhen and purple gallinule beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose.

1. The first Saturday in September for nine (9) consecutive days;

2. Statewide except for the Ballard reporting area, and public lands in the west-central goose zone and the northeast goose zone which are established in 301 KAR 2:224.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Doves:

1. Daily limit shall be fifteen (15);

2. Possession limit shall be thirty (30);

3. Eurasian collared doves may be taken in addition to mourning doves if the hunter leaves the head or wing attached while in the field.

(b) Woodcock:

1. Daily limit shall be three (3); and

2. Possession limit shall be six (6).

(c) Common snipe:

1. Daily limit shall be eight (8); and
2. Possession limit shall be sixteen (16).
(d) Virginia rails and sora rails, singly or in the aggregate:
1. Daily limit shall be twenty-five (25); and
2. Possession limit shall be twenty-five (25).
(e) Common moorhen and purple gallinules singly or in the aggregate:
1. Daily limit shall be fifteen (15); and
2. Possession limit shall be thirty (30).
(f) Wood duck and teal:
1. Daily limit shall be four (4), which shall not include more than two (2) wood ducks; and
2. Possession limit shall be eight (8), which shall not include more than four (4) wood ducks.
(g) Canada goose.
1. Daily limit two (2) birds; and
2. Possession limit four (4) birds.
(2) A person shall leave the head or one (1) fully-feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.
(1) Doves:
(a) The time between 11 a.m. and sunset during the September and October portions of the season, except if dove hunting on private land after September 1 the time between one-half (1/2) hour before sunrise and sunset; and
(b) The time between one-half (1/2) hour before sunrise and sunset during the November and December portions of the season.
(2) Other species listed in this administrative regulation may be taken between one-half (1/2) hour before sunrise and sunset.

Section 5 Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell.
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A Wildlife Management Area owned or controlled by the department:
(a) Except as provided in this section, all provisions of this administrative regulation shall apply.
(b) A person shall not:
1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2.222;
2. Hunt in an area marked by a sign as closed to hunting; and
3. Enter an area marked by a sign as closed to the public.
(2) A person hunting dove on the Ballard, Boatwright, South Shore, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River, Westvaco Wildlife Management Area, Yatesville Lake Wildlife Management Area, and established Wildlife Management Area waterfowl refutes as posted by sign, shall only possess or use U.S. Fish and Wildlife Service approved nontoxic shot.
(3) Ballard Wildlife Management Area:
(a) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;
(b) A person shall not hunt snipe after October 13; and
(c) A person shall not hunt woodcock.
(4) The Swan Lake Unit of Boatwright Wildlife Management Area.
(a) The body of water known as Swan Lake is closed to hunting;
(b) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;
(c) A person shall not hunt snipe after October 13; and
(d) A person shall not hunt woodcock.
(5) Central Kentucky Wildlife Management Area.
(a) A person shall not hunt doves after October 13, except as provided in 301 KAR 2.221;
(b) A person shall not hunt snipe after October 13, except as provided in 301 KAR 2:221;
(c) A person shall not hunt woodcock.
(6) Grayson Lake Wildlife Management Area. A person shall not hunt:
(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
(b) On Deer Creek Fork; or
(c) On or from the shores of Camp Webb or the state park.
(7) Land Between the Lakes. A person shall not hunt migratory game birds between the last Saturday in September and November 30.
(8) West Kentucky Wildlife Management Area. A person shall not hunt:
(a) Woodcock and snipe except on tracts 2, 3, 6, and 7; and
(b) On a tract designated by a number followed by the letter "A".
(9) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.
(10) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:
(a) Terrain of the field;
(b) Topography of the field; and
(c) Providing for approximately forty (40) yards between hunters.
(2) A strategically located sign shall be posted in a field advising a hunter:
(a) Of the recommended hunter density; and
(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.
(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: June 8, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by November 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.

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 2007-08 season dates and bag limits within federal waterfowl hunting frameworks established in 50

C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS). Most changes are the result of calendar shift. The mourning dove season will be changed from three segments back to two segments because of hunter input. Closure of the Ballard Reporting Area to September Canada goose hunting was done to permit establishment of a local flock in an effort to restore historical hunting opportunity within the region. Other amendments were limited to changes on wildlife management areas.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2007-08 early migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) and KRS 150.600(1) authorizes the Department of Fish and Wildlife Resources to establish migratory bird hunting season dates and limits.

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

(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 an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the frameworks for migratory game bird hunting seasons. This amendment reflects the federal mandate regulations for migratory bird game bird hunting under guidance of the Migratory Bird Treaty Act. Most changes are the result of calendar shift. The mourning dove season will be changed from three segments back to 2 segments because of hunter input. Closure of the Ballard Reporting Area to September Canada goose hunting was done to permit establishment of a local flock in an effort to restore historical hunting opportunity within the region. Other amendments were limited to changes on wildlife management areas.

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

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

(d) How the amendment will assist in the effective administration of the statutes: See "1(d)" above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl and 50,000 migratory game bird hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the hunting guide. Hunters will have to review the hunting guide for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt migratory game birds.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the state Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

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

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

Revenues (+/-).

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

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

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession

limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 50, Appendices A-K, 51.100(s), 51.121, 51.165, 51.166, 53, 60 Appendices A and B, 61 Appendix B, 75, 96, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO_2 or NOx imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:

(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation.

1. Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period are used to calculate actual emissions.

(b) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For an emissions unit, that has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.

(d) This definition does not include:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20[23].

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination:

(a)[1.] Is to be made on a case-by-case basis;

(b)[2.] Considers the geographic extent, intensity, duration, frequency and time of visibility impairment and how these factors correlate with the times of visitor use of the Class I area; and

(c)[3.] Considers the frequency and timing of natural conditions that reduce visibility.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined in KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined in KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) "Allocate" or "allocation" means the determination by the cabinet of the number of NOx allowances to be credited to a NOx budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source that is calculated using the maximum rated capacity of the source, unless the source is subject to federally-enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

1. The applicable standards of 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally-enforceable permit condition, including those with a future compliance date, or

(b) For an actuals PAL, the emissions rate of a stationary source that is calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1 to 3 of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(14) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive

twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;

2. Use of a time period other than the twenty-four (24) month period is allowed, if the cabinet determines that a different time period is more representative of normal source operation; and

3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed, where a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 401 KAR 51:052.

1. The rate is an average that:

a. Includes fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward:

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed; however, a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area, and every part of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) cannot intersect or be smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM_{10} increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and

2. The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase:

1. Actual emissions at a major source, that result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.

(b) For a change in method of operations, those on-site activities other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:

(a) Is determined by the cabinet on a case-by-case basis after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard of 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping, or have the same

two (2) digit major group code, as described in the Standard Industrial Classification Manual, 1987;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "°C" means degree Celsius (centigrade).

(31) "Cabinet" is defined in KRS 224.01-010(9)

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined in 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH_4" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:

(a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000; or

(b) To the U.S. EPA for a similar project.

(38) [~~"Clean unit" means an emissions unit that:~~

~~(a) Has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with the applicable BACT or LAER requirements; and qualifies as a clean unit pursuant to 401 KAR 51:017, Section 20 or 401 KAR 51:052, Section 11;~~

~~(b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or~~

~~(c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(y)(3)(i) to (iv).~~

~~(39)~~] "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39)[~~(40)~~] "CO" means carbon monoxide.

(40)[~~(41)~~] "CO_2" means carbon dioxide.

(41)[~~(42)~~] "COD" means chemical oxidant demand.

(42)[~~(43) "Collateral pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.~~

~~(44)~~] "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(43)[~~(45)~~] "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(44)[~~(46)~~] "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary pre-construction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(45)[~~(47)~~] "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(46)[~~(48)~~] "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(47)[~~(49)~~] "Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(48)[~~(50)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49)[~~(51)~~] "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50)[~~(52)~~] "Construction" means:

(a) Fabrication, erection, installation or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

(51)[~~(53)~~] "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or 401 KAR 51.052 to sample, condition, (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52)[~~(54)~~] "Continuous emission monitoring system for NOx" or "CEMS for NOx" means the equipment required by 40 C.F.R. 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emission monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O_2 or CO_2) if required by 40 C.F.R. 96.70 to 96.76;

(d) Continuous moisture monitor if required by 40 C.F.R. 96.70 to 96.76; and

(e) Automated data acquisition and handling system.

(53)[~~(55)~~] "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(54)[~~(56)~~] "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations, used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(55)[~~(57)~~] "Continuous parameter monitoring system" or

"CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51 017 and 401 KAR 51:052 to:

(a) Monitor process and control device operational parameters such as control device secondary voltages and electric currents;

(b) Monitor other information such as gas flow rate, ozone or carbon dioxide concentrations; and

(c) Record average operational parameter values on a continuous basis.

(56)[~~(58)~~] "Control period" means:

(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and

(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

(57)[~~(59)~~] "Director" means Director of the Division for Air Quality of the Environmental and Public Protection Cabinet.

(58)[~~(60)~~] "District" is defined in KRS 224.01-010(11).

(59)[~~(61)~~] "dscf" means dry cubic feet at standard conditions.

(60)[~~(62)~~] "dscm" means dry cubic meter at standard conditions.

(61)[~~(63)~~] "Electric generating unit" means, for 401 KAR 51:160 to 401 KAR 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62)[~~(64)~~] "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:

(a) A steam electric generating unit that is constructed for the purpose of supplying for sale:

1. More than one-third (1/3) of its potential electric output capacity; and

2. More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and

(b) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.

(63)[~~(65)~~] "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64)[~~(66)~~] "Emissions unit" means any part of a stationary source including an EUSGU that emits or will have the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 401 KAR 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(65)[~~(67)~~] "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards, and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66)[~~(68)~~] "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67)[~~(69)~~] "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

(68)[~~(70)~~] Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69)[~~(71)~~] "Existing source" means a source that is not a new source.

(70)[~~(72)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(71)[~~(73)~~] "°F" means degree Fahrenheit.

(72)[~~(74)~~] "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(73)[~~(75)~~] "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

(74)[~~(76)~~] "Federally-enforceable permit" means a permit issued under 401 KAR 52.020 or 401 KAR 52:030, as appropriate.

(75)[~~(77)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76)[~~(78)~~] "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77)[~~(79)~~] "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78)[~~(80)~~] "ft" means feet or foot.

(79)[~~(81)~~] "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80)[~~(82)~~] "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81)[~~(83)~~] "g" means gram.

(82)[~~(84)~~] "gal" means gallon.

(83)[~~(85)~~] "General fund" is defined in KRS 48.010(13)(a).

(84)[~~(86)~~] "Generator" means a device that produces electricity.

(85)[~~(87)~~] "gr" means grain.

(86)[~~(88)~~] "HCl" means hydrochloric acid.

(87)[~~(89)~~] "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.

(88)[~~(90)~~] "HF" means hydrogen fluoride.

(89)[~~(91)~~] "Hg" means mercury.

(90)[~~(92)~~] "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(91)[~~(93)~~] "hr" means hour.

(92)[~~(94)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93)[~~(95)~~] "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94)[~~(96)~~] "H_2O" means water.

(95)[~~(97)~~] "H_2S" means hydrogen sulfide.

(96)[~~(98)~~] "H_2SO_4" means sulfuric acid.

(97)[~~(99)~~] "in" means inch.

(98)[~~(100)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99)[~~(101)~~] "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100)[~~(102)~~] "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but will have a substantial likelihood of achieving:

(a) Greater continuous emissions reduction than any control system in current practice; or

(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(101)[~~(103)~~] "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102)[~~(104)~~] "J" means joule.

(103)[~~(105)~~] "Kg" means kilogram.

(104)[~~(106)~~] "l" means liter.

(105)[~~(107)~~] "lb" means pound.

(106)[~~(108)~~] "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107)[~~(109)~~] "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108)[~~(110)~~] "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109)[~~(111)~~] "Low terrain" means an area other than high terrain.

(110)[~~(112)~~] "Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on:

(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or

(b) The most stringent emissions limitation that is achieved in practice by the class or category of stationary sources.

1. If this limitation is applied to a modification, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.

2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(111)[~~(113)~~] "m" means meter.

(112)[~~(114)~~] "m^3" means cubic meter.

(113)[~~(115)~~] "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas.

(114)[~~(116)~~] "Major modification" means a physical change in or a change in the method of operation of a major stationary source that would result in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51.017, or December 21, 1976, for 401 KAR 51 052; unless the change would be prohibited under a federally-enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use under a permit issued pursuant to 401 KAR 51:017 or 401 KAR 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally-enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52 21; after June 6, 1979, pursuant to 401 KAR 51 015; after September 22, 1982, pursuant to 401 KAR 51:017; or under 401 KAR 52.020 and 401 KAR 51.016E;

6 A change in ownership at a stationary source;

7. [~~The addition, replacement or use of a pollution control project at an existing emissions unit meeting the requirements of 401 KAR 51.017, Section 22 or 401 KAR 51 052, Section 13, as applicable;~~

~~8.~~] The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8 [~~9.~~] The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

9.[~~10.~~] The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) The definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 401 KAR 51 017, Section 20[23] and 401 KAR 51:052, Section 11[14]for a PAL for that pollutant Instead, the definition at subsection (175)[~~(177)~~] of this section shall apply

(115)[~~(117)~~] "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116)[~~(118)~~] "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117)[~~(119)~~] "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(118)[~~(120)~~](a) "Major stationary source" means:

1.a. A stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of a regulated NSR pollutant; or

b. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1b of this paragraph, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated

NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds is considered major for ozone.

(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills,
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants,
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Any stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119)[~~(121)~~] "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(120)[~~(122)~~] "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(121)[~~(123)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(122)[~~(124)~~] "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(123)[~~(125)~~] "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D to report heat input, or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO_2 concentration (in percent CO_2) or the minimum percent O_2, if the unit intends to use a flow monitor and a diluent gas monitor.

(124)[~~(126)~~] "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O_2 or the minimum percent CO_2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(125)[~~(127)~~] "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(126)[~~(128)~~] "µg" means microgram.

(127)[~~(129)~~] "mg" means milligram.

(128)[~~(130)~~] "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129)[~~(131)~~] "min" means minute.

(130)[~~(132)~~](a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to regulations approved under 40 C.F.R. 51.166 submits a complete application under the relevant regulations.

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and

2. For nitrogen dioxide, the trigger date is February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM_{10} increments, except that the cabinet may rescind the minor source baseline date if it is shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application under the relevant regulations; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131)[~~(133)~~] "MJ" means megajoules.

(132)[~~(134)~~] "mm" means millimeter.

(133)[~~(135)~~] "MM" means million.

(134)[~~(136)~~] "mo" means month.

(135)[~~(137)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(136)[~~(138)~~] "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, or replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the

change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137)[~~(139)~~] "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record, if applicable, process parameters.

(138)[~~(140)~~] "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.

(139)[~~(141)~~] "MWe" means megawatt electrical.

(140)[~~(142)~~] "N_2" means nitrogen.

(141)[~~(143)~~] "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

(142)[~~(144)~~] "Natural conditions" means those naturally-occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143)[~~(145)~~] "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP and federal air quality control laws and regulations.

(144)[~~(146)~~](a) "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51.017, Section 1(4) or 401 KAR 51.052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as defined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51.017, 401 KAR 51.052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs,[~~; and~~

~~3. The increase or decrease in emissions did not occur at a clean unit, except as provided in 401 KAR 51:017, Sections 20(7) or 21(9) or 401 KAR 51:052, Sections 11(7) or 12(9)~~]

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM_{10} emissions are used to evaluate the net emissions increase for PM_{10}.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change[~~; and~~

~~4. The decrease did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 40 C.F.R. 52.21(y) or under administrative regulation approved pursuant to 40 C.F.R. 51.166(u) or 51.165(d)~~]

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145)[~~(147)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146)[~~(148)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(147)[~~(149)~~] "ng" means nanograms.

(148)[~~(150)~~] "NO" means nitric oxide.

(149)[~~(151)~~] "NO_2" means nitrogen dioxide.

(150)[~~(152)~~] "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C F.R. 51.165 and 40 C.F.R. Part 51, Appendix S.

(151)[~~(153)~~] "NOx" means nitrogen oxides.

(152)[~~(154)~~] "NOx allowance" means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.

(153)[~~(155)~~] "NOx Allowance Tracking System (NATS)" means the system by which the U S. EPA records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

(154)[~~(156)~~] "NOx authorized account representative" means the natural person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 C.F.R. Part 96, Subpart B for a NOx budget source and all NOx budget units at the source; and

(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 C.F.R. Part 96, Subpart F, for a general account.

(155)[~~(157)~~] "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(156)[~~(158)~~] "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(157)[~~(159)~~] "NOx budget source" means a source that includes one (1) or more NOx budget units.

(158)[~~(160)~~] "NOx Budget Trading Program" means the multistate NOx air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport

of O_3, O_3 precursors, and NOx.

(159)[~~(161)~~] "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160)[~~(162)~~] "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(161)[~~(163)~~] "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, NOx budget unit owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(162)[~~(164)~~] "O_2" means oxygen.

(163)[~~(165)~~] "O_3" means ozone

(164)[~~(166)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165)[~~(167)~~] "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166)[~~(168)~~] "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167)[~~(169)~~] "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168)[~~(170)~~] "Owner" means, for a NOx budget unit, the following persons:

(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn; or

(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(169)[~~(171)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(170)[~~(172)~~] "oz" means ounce.

(171)[~~(173)~~] "Ozone depleting potential" or "ODP", as determined by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B, means the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichloroflouromethane, CFC-11; i.e , the ODP of CFC-11 equals 1.0.

(172)[~~(174)~~] "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173)[~~(175)~~] "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174)[~~(176)~~] "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175)[~~(177)~~] "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176)[~~(178)~~] "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177)[~~(179)~~] "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178)[~~(180)~~] "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or a solid measured by an approved test method.

(179)[~~(181)~~] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(180)[~~(182)~~] "Peak load" means the maximum instantaneous operating load.

(181)[~~(183)~~] "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182)[~~(184)~~] "Person" is defined by KRS 224.01-010(17).

(183)[~~(185)~~] "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 401 KAR 51:052[~~, Section 23 or 401 KAR 51:052, Section 14~~].

(184)[~~(186)~~] "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two-and-a-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185)[~~(187)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186)[~~(188)~~] "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(187) [~~(189) "Pollution control project" or "PCP" means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emis-~~

~~sions of air pollutants from that unit in accordance with 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13. Qualifying activities or projects include:~~

~~(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2;~~

~~(b) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;~~

~~(c) Flue gas recirculation, low NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation absorption catalyst for control of NOx;~~

~~(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of VOCs or HAPs;~~

~~(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:~~

~~1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one hundredths (0.05) percent sulfur diesel;~~

~~2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood;~~

~~4. Switching from coal to #2 fuel oil with a five tenths (0.5) percent maximum sulfur content, and~~

~~5. Switching from high sulfur coal to low sulfur coal with a maximum one and two tenths (1.2) percent sulfur content; and~~

~~(f) Activities or projects undertaken to accommodate switching from the use of an ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.~~

~~1. The productive capacity of the equipment is not increased as a result of the activity or project, and~~

~~2. The projected usage of the new substance is lower, on an ODP weighted basis, than the baseline usage of the replaced ODS, determined by:~~

~~a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;~~

~~b. Calculating the replaced ODP weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;~~

~~c. Calculating the projected ODP weighted amount by multiplying the projected annual usage of the new substance by its ODP; and~~

~~d. If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected use of the new substance is lower, on an ODP weighted basis, than the baseline usage of the replaced ODS.~~

~~(190)~~] "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include recycling, other than certain in-process recycling practices, energy recovery, treatment, or disposal.

(188)[~~(191)~~] "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189)[~~(192)~~] "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190)[~~(193)~~] "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, where:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, where.

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actuals PAL, is federally enforceable or enforceable as a practical matter; and

2 Secondary emissions are not counted.

(191)[~~(194)~~] "ppb" means parts per billion.

(192)[~~(195)~~] "ppm" means parts per million.

(193)[~~(196)~~] "ppm(w/w)" means parts per million (weight by weight).

(194)[~~(197)~~] "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195)[~~(198)~~] "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and other information, such as gas flow rate, ozone or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(196)[~~(199)~~] "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197)[~~(200)~~] "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198) [~~(201) "Primary pollutant" means a regulated NSR pollutant for which a pollution control project is undertaken to reduce emissions of that pollutant.~~

~~(202)~~] "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199)[~~(203)~~] "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity; filings with the cabinet and the U.S. EPA; and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.

(200)[~~(204)~~] "psia" means pounds per square inch absolute.

(201)[~~(205)~~] "psig" means pounds per square inch gage.

(202)[~~(206)~~] "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203)[~~(207)~~] "Reactivation of a very clean coal-fired EUSGU" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;

(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671q.

(204)[~~(208)~~] "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. 7501 to 7515 or may reasonably be required by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.

(205)[~~(209)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206)[~~(210)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207)[~~(211)~~] "Regulated NSR pollutant" means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the U.S. EPA;

(b) A pollutant that is subject to any standard promulgated under 42 U.S.C. 7411;

(c) A pollutant that is subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

(208)[~~(212)~~] "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209)[~~(213)~~](a) "Repowering" means:

1. Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; and

2. An oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.

(b) A permit application from a source that satisfies this definition shall receive expedited consideration by the cabinet and is granted an extension under 42 U.S.C. 7651h.

(210)[~~(214)~~] "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211)[~~(215)~~] "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212)[~~(216)~~] "S" means at standard conditions.

(213)[~~(217)~~] "sec" means second.

(214)[~~(218)~~] "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215)[~~(219)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51.010.

(216)[~~(220)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(217)[~~(221)~~] "Shutdown" means the cessation of an operation.

(218)[~~(222)~~] "Significant" means:

(a) For 401 KAR 51.017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2×10^{-6} megagrams per year (Mg/y) (3.5×10^{-6} tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	35 Mg/y (50 tpy)

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) $\mu g/m^3$ over a twenty-four (24) hour average.

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0 6 tpy

(219)[~~(223)~~] "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220)[~~(224)~~] "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level as defined in [~~subsection (221) of~~] this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221)[~~(225)~~] "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in [~~subsection (220) of~~] this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222)[~~(226)~~] "SO_2" means sulfur dioxide.

(223)[~~(227)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224)[~~(228)~~] "sq" means square.

(225)[~~(229)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226)[~~(230)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227)[~~(231)~~] "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29 92 in. of Hg).

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228)[~~(232)~~] "Start-up" means the setting in operation of an affected facility.

(229)[~~(233)~~] "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230)[~~(234)~~] "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

(231)[~~(235)~~] "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(232)[~~(236)~~] "TAPPI" means Technical Association of the Pulp and Paper Industry.

(233)[~~(237)~~] "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(234)[~~(238)~~] "Ton" or "tonnage" means, for a NOx budget source, a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(235)[~~(239)~~] "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(236)[~~(240)~~] "tpy" means tons per year.

(237)[~~(241)~~] "TSS" means total suspended solids.

(238)[~~(242)~~] "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(239)[~~(243)~~] "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(240)[~~(244)~~] "Urban county" means a county that is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county shall be a part of an urbanized area, then the entire county shall be classified as urban for the administrative regulations of the Division for Air Quality.

(241)[~~(245)~~] "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(242)[~~(246)~~] "U.S. EPA" means the United States Environmental Protection Agency.

(243)[~~(247)~~] "UTM" means Universal Transverse Mercator.

(244)[~~(248)~~] "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration, from that which would have existed under natural conditions.

(245)[~~(249)~~] "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).

(246)[~~(250)~~] "yd" means yard.

Section 2. Incorporation by Reference. (1) The following mate-

rial is incorporated by reference:

(a) "Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget";

(b) "40 C.F.R. Part 82, Appendix A to Subpart A of Part 82 - Class I Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003"; and

(c) "40 C.F.R. Part 82, Appendix B to Subpart A of Part 82 - Class II Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4 30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080,

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3)(a) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650.

(b) Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 28, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this ordinary administrative regulation will be held on November 27, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on November 30, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions regulation assists the public and the regulated community by defining the terms used in 401 KAR Chapter 51.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the definitions to mirror recent amendments at the federal level (72 Fed.Reg. 24077 May 1, 2007). It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment revises the definition of terms used in Kentucky's Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are based upon federal revisions affecting Kentucky's PSD and NSR regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendments will provide the definitions of terms used in 401 KAR Chapter 51.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation does not directly impact individuals, organizations, or state and local governments.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation does not directly impact individuals, organizations, or state and local governments.

(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 regulation does not directly impact individuals, organizations, or state and local governments.

(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 costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits related to this regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This regulation will not require an increase in fees or funding in order to implement its provisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this regulation provides the definitions of terms for 401 KAR Chapter 51 and imposes no requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

However, recent changes in the federal PSD/NSR Program make it necessary to revise the regulation in order to ensure program parity.

2. State compliance standards. The state compliance standards are found in KRS 224.01-010, 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this regulation. However, changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no requirements because it only provides definitions of terms used in 401 KAR Chapter 51.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

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 Division for Air Quality implements this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5) authorizes the cabinet to promulgate regulations for the prevention, abatement, and control of air pollution. This regulation simply defines the terms used in 401 KAR Chapter 51 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no direct costs 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, sec. IV, Part 51, Appendix W, 51.166, 52.21, Part 58, Appendix B, 60, 61, 63, 81.318, 81 Subpart D, 42 U S C. 7401-7671q (Clean Air Act), 4321-4370d (National Environmental Policy Act)

STATUTORY AUTHORITY: KRS 224.10-100[~~, 40 C.F.R. 51.166, 52.21~~], 42 U.S.C. 7401-7671q (Clean Air Act)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 C.F.R. 51.166.

Section 1.. Applicability. (1) This administrative regulation shall apply to the construction of a new major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (iii).

(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.

(3) The owner or operator of a new major stationary source or major modification, which is subject to the requirements of Sections 8 to 16 of this administrative regulation, shall not begin actual construction without a proposed permit or proposed permit revision issued under 401 KAR 52:020 stating that the major stationary source or major modification shall meet those requirements.

(4) Applicability tests for projects. Except as provided in subsection (5) or (6) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. [~~Emissions test for projects that involve clean units. An emission increase shall not be deemed to occur for a project that will be constructed and operated at a clean unit without causing the unit to lose its clean unit designation as provided in Sections 20 and 21 of this administrative regulation.~~

~~4.~~] Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using a method specified in subparagraphs 1 to 2[3] of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable procedure of paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1[~~(146)~~].

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 20[~~23~~] of this administrative regulation.

[~~(6) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 22 of this administrative regulation.~~]

Section 2. Ambient Air Increments. (1) In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the following levels:

Pollutant	Maximum Allowable Increase, (Micrograms per cubic meter)
Class I	
Particulate Matter:	
PM_{10}, annual arithmetic mean	4
PM_{10}, 24-hour maximum	8
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2 5
Class II	
Particulate Matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hour maximum	30
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. Ambient Air Ceilings. The concentration of a regulated NSR pollutant shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 4. Restrictions on Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 5. Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52:100, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from these sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (3) of this section.

(2) Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an order and curtailment plan are applicable, an exclusion shall apply more than five (5) years after the later of the two (2) effective dates.

(3) For excluding concentrations pursuant to subsection (1)(d) of this section:

(a) The time period over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur shall be specified and shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be renewable;

(c) An emissions increase from a stationary source shall not occur that will:

1. Impact a Class I area or an area in which an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall not exceed the levels occurring from those sources before the revision was approved.

Section 6. Stack Heights. (1) The degree of emissions limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 7. Exemptions. (1) Sections 8 to16 of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982,

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more.

(b) The major stationary source is a nonprofit health institution, a nonprofit educational institution, or a major modification at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements.

(c) The source or modification is a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants with thermal dryers;

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9 Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants, furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(d) The source or modification is a portable stationary source that has previously received a permit under this administrative regulation; and

1. The owner or operator proposes to relocate the source and emissions of the source at the new location will be temporary;
2. The emissions from the source will not exceed its allowable emissions;
3. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and
4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987;
2. Commenced construction within eighteen (18) months after July 31, 1987; and
3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this administrative regulation for particulate matter requirements in effect before July 31, 1987, and the owner or operator submitted an application for a permit under the applicable permit program before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect.

(2) Sections 8 to16 of this administrative regulation shall not apply to a major stationary source or major modification for a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(3) Sections 9,11, and 13 of this administrative regulation shall not apply to a proposed major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) Sections 9, 11, and 13 of this administrative regulation, as applicable to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT will be less than fifty (50) tons per year.

(5) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 μg/m^3	8-hour average
Nitrogen dioxide	14 μg/m^3	annual average
Particulate matter	10 μg/m^3 of PM_{10}	24-hour average
Sulfur dioxide	13 μg/m^3	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data	
Lead	0.1 μg/m^3	3-month average
Fluorides	0 25 μg/m^3	24-hour average
Hydrogen sulfide	0.2 μg/m^3	1-hour average
Total reduced sulfur	10 μg/m^3	1-hour average
Reduced sulfur compounds	10 μg/m^3	1-hour average

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection, or the pollutant is not listed in the table.

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM_{10}, if:

(a) The owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increases for PM_{10} took effect as part of Kentucky's SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(8)(a) The cabinet may determine that the requirements for air quality monitoring of PM_{10} in Section 11 of this administrative regulation shall not apply to a particular source or modification, if:

1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and
2. The cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 11 of this administrative regulation.

(b) The requirements for air quality monitoring of PM_{10} in Section 11 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R.

52.21 or this administrative regulation after June 1, 1988, and no later than December 1, 1988.

1. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 of this administrative regulation; and

2. If the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, which may not to be less than four (4) months, the data that Section 11 of this administrative regulation requires shall have been gathered over that shorter period.

(9) The requirements of Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM_{10}, if:

(a) The owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52 21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM_{10} took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

(b) Instead, the requirements of Section 9(2) shall apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

Section 8. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP and each applicable emissions standard and standard of performance under 40 C.R.R. Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant for which the source has the potential to emit in significant amounts.

(3) A major modification shall apply BACT:

(a) For each regulated NSR pollutant that results in a significant net emissions increase at the source; and

(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects.

(a) The cabinet shall review and modify, as appropriate, the BACT determination at the latest reasonable time occurring no later than eighteen (18) months prior to commencement of construction of each independent phase of the project; and

(b) The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a previous BACT determination for the source.

Section 9. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) A national ambient air quality standard in an air quality control region; or

(2) An applicable maximum allowable increase over the baseline concentration in any area.

Section 10. Air Quality Models. (1) Estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models" (2003), Appendix A".

(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

(a) The use of a modified or substitute model shall be:

1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and

2. Made on a case-by-case basis and receive written approval from the U.S. EPA

(b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine the comparability of air quality models.

Section 11. Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit or permit revision under 401 KAR 52.020 and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following:

1. For a source, each pollutant that the source will have the potential to emit in a significant amount;

2. For a modification, each pollutant that the modification will result in a significant net emissions increase.

(b) For a pollutant that does not have a national ambient air quality standard, the analysis shall contain air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants, other than nonmethane hydrocarbons, for which a standard exists, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d)1. The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application.

2. If the cabinet determines that a complete and adequate analysis may be accomplished with monitoring data gathered over a period shorter than one (1) year, that period shall be not less than four (4) months.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone instead of providing preconstruction data as required in this section.

(f) For air quality monitoring of PM_{10} under Section 7(8)(a) and (b) of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PM_{10} using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet.

(2) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator shall conduct ambient monitoring that the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. During the operation of air quality monitoring stations, the owner or operator of a major stationary source or major modification shall meet the requirements of 40 C.F.R. Part 58, Appendix B to satisfy the air quality analysis requirements of this section.

Section 12. Source Information. The owner or operator of a proposed source or modification shall submit to the cabinet all information necessary to perform an analysis or make a determination required under this administrative regulation.

(1) The information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification; and

(c) A detailed description of the system of continuous emissions reduction planned for the source or modification, emissions estimates, and other information necessary to determine that BACT will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the source or modification

will affect.

Section 13. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that will occur as a result of:

(a) The source or modification; and

(b) General commercial, residential, industrial and other growth associated with the source or modification.

(2) The owner or operator shall not be required to provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(3) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(4) Visibility monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using:

1.[~~(1)~~] Human observations;

2.[~~(2)~~] Teleradiometers;

3.[~~(3)~~] Photographic cameras;

4.[~~(4)~~] Nephelometers;

5.[~~(5)~~] Fine particulate monitors; or

6.[~~(6)~~] Other appropriate methods as specified by the U.S. EPA.

(b) The method selected shall be determined on a case-by-case basis by the cabinet.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide:

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification that may affect the Class I area.

(b) Notice promptly after receiving the permit application. The notice shall:

1. Include a copy of all information relevant to the permit application:

2. Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct;

3. Include an analysis of the proposed source's anticipated impacts on visibility in the Class I area.

(c) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect visibility and other air quality related values of the lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.

(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

(b) If the cabinet finds the analysis does not demonstrate to the cabinet's satisfaction that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained.

(4) Denial; impact on air quality related values.

(a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values of those lands, even though the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area.

(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, the cabinet shall not issue the permit or permit revision.

(5) Class I variances.

(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will have no adverse impact on the visibility or other air quality related values of lands located in a Class I area, even though the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area as specified in Section 2(1) of this administrative regulation.

(b) If the federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and he so certifies, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit or permit revision with emissions limitations that are necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in Section 2(1) of this administrative regulation.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.

(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance will not adversely affect the visibility or other air quality related values of the area

(b) The governor, after consideration of the federal land manager's recommendation, if applicable, and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.

(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence.

(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.

(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with the requirements of 401 KAR Chapter 52, if the other applicable requirements of this administrative regulation are met.

(8) Emissions limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with the emissions limitations necessary to assure that:

(a) Emissions of sulfur dioxide from the source or modification shall not, during a day on which the other applicable maximum allowable increases are exceeded, cause or contribute to concentrations that will exceed the maximum allowable increases over the baseline concentration as specified in the following table; and

Maximum Allowable Increase (Micrograms per cubic meter)		
	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(b) Emissions shall not cause or contribute to concentrations that exceed other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days which are not necessarily consecutive during an annual period.

Section 15. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100, and 40 C.F.R. 51.166(q) and this administrative regulation in processing applications under this administrative regulation.

Section 16. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3 Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 68 and other requirements of local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, Sections 8 to 16 of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator elects to use the method specified in 401 KAR 51:001, Section 1[~~(202)(b)~~] to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

(d)1. If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator:

a. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; but

b. Shall not be required to obtain a determination from the cabinet before beginning actual construction.

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that set out the unit's annual emissions during the calendar year that preceded submission of the report.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceeds the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant, and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under [~~to~~] this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 17. Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement under 42 U.S C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 to the maximum extent feasible and reasonable.

Section 18. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet may, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) of this administrative regulation by a date specified by the cabinet. The date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance;

(c) The source or modification will meet requirements equiva-

lent to those in Sections 8 and 9 of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology will be required to meet on the date specified by the cabinet;

(d) The source or modification will not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

2. Impact an area in which an applicable increment is known to be violated;

(e) Section 14 of this administrative regulation relating to Class I areas has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date and contributes to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

Section 19. Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. [~~Clean Unit Test for Emissions Units that are Subject to BACT or LAER. For any emissions unit that is subject to BACT or LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (3) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (4) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with BACT in the permit for the unit, and~~

~~2. Alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with BACT in the permit for the unit, or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.~~

~~(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.~~

~~2. Qualifying air pollution control technologies requirement. Air pollution emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:~~

~~a. The control technology shall achieve the BACT or LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;~~

~~b. The emissions unit shall not be eligible for the clean unit designation if the BACT determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and~~

~~c. The owner or operator shall have made an investment to install the control technology. An investment shall include expenses to research the application of or to actually apply a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 21 of this administrative regulation.~~

~~1. For an emissions unit that is requalifying for clean unit designation, an owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020.~~

~~2. The permit shall require compliance with the current day BACT or LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.~~

~~(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day BACT shall be:~~

~~1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued, and~~

~~2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.~~

~~(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.~~

~~(4) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this~~

~~subsection, as applicable.~~

~~(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current day BACT, the expiration date of the clean unit designation shall be:~~

~~1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:~~

~~1. Ten (10) years after the effective date; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (6) of this section.~~

~~(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.~~

~~(b) The effective date of the clean unit designation.~~

~~1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of the clean unit designation.~~

~~1. If the exact expiration date is not known at the date the clean unit designation is initially recorded into the Title V permit, the permit shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~3. If originally absent for the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with BACT and any physical or operational characteristics that formed the basis for the BACT determination.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.~~

~~(6) Maintaining the clean unit designation.~~

~~(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.~~

~~1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the BACT that are recorded in the major NSR permit or permit revision and subsequently reflected in the Title V permit;~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination;~~

~~3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and~~

~~4. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(7) Netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis unless:~~

~~1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall also be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(8) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 21. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to BACT. For an emissions unit at a major stationary source that does not qualify as a clean unit under Section 20 of this administrative regulation but is achieving a level of emissions control comparable to BACT, the owner or operator may use the clean unit test specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT according to subsection (3) of this section, and~~

~~2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT according to subsection (7)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT.~~

~~(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to~~

~~lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:~~

~~a. Demonstrate that an emissions unit's control technology is comparable to BACT according to the requirements of subsection (3) of this section;~~

~~b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and~~

~~c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:~~

~~a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~b. Adversely impact visibility or another air quality related value that has been identified as a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~3. Date of installation requirement.~~

~~a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which a clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.~~

~~b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.~~

~~(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 20 of this administrative regulation.~~

~~1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current day BACT.~~

~~2. The emissions unit shall meet the requirements of subsections (2)(a)1 and 2 of this section.~~

~~(3) Demonstrating control effectiveness comparable to BACT. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to BACT under the provisions of either paragraph (a) or (b) of this subsection.~~

~~(a) Comparison of the control technology to previous BACT and LAER determinations.~~

~~1. An emissions unit's control technology shall be presumed to be comparable to BACT if:~~

~~a. The control technology achieves an emissions limitation that is equal to or better than the average of the emissions limitation achieved by all the sources for which a BACT or LAER determination has been made within the preceding five (5) years and entered into the RACT/BACT/LAER Clearinghouse; and~~

~~b. Application of the BACT or LAER control technology to the emissions unit is technically feasible.~~

~~2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to BACT, the cabinet shall:~~

~~a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period, and~~

~~b. Compare this presumption to any additional BACT or LAER determinations of which the cabinet is aware.~~

~~(b) The substantially as effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT pursuant to this paragraph. The cabinet:~~

~~1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as BACT, and~~

~~2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as BACT after considering the evidence.~~

~~(c) Time of comparison.~~

~~1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:~~

~~a. The BACT requirements that applied at the time the control technology was installed; or~~

~~b. The current day BACT requirements.~~

~~2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current day BACT requirements.~~

~~(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:~~

~~(a) The date that the permit or permit revision required by subsection (6) of this section is issued; or~~

~~(b) The date that the emissions unit's air pollution control technology is placed into service.~~

~~(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.~~

~~(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.~~

~~(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.~~

~~(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.~~

~~(6) Procedures for designating emissions units as clean units.~~

~~(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and~~

~~(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.~~

~~(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions.~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies;~~

~~(b) The effective date of clean unit designation.~~

~~1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date, and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;~~

~~(c) The expiration date of clean unit designation.~~

~~1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date, and~~

~~3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to BACT and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT;~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section, and~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (8) of this section.~~

~~(8) Maintaining the clean unit designation.~~

~~(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.~~

~~1. To ensure that the control technology continues to achieve emissions control comparable to BACT, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to BACT, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT.~~

~~3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.~~

~~4. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(9) Netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis, unless:~~

~~1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires, or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit, and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall also be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(10) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 22. PCP Exclusion Procedural Requirements. For a project to qualify for a pollution control project (PCP) exclusion, an owner or operator shall comply with the provisions of this section.~~

~~(1) To request a PCP designation for a project the owner or operator shall:~~

~~(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f), or~~

~~(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in the definition at 401 KAR 51:001, Section 1(188)(a) to (f).~~

~~(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:~~

~~(a) An environmentally beneficial analysis.~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and~~

~~2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.~~

~~(b) An air quality analysis. The emissions increases from the project shall not:~~

~~1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:~~

~~(a) A description of the project;~~

~~(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases using the methodology in Section 1(4) of this administrative regulation that will result from the project;~~

~~(c) A copy of the environmentally beneficial analysis required by subsection (2)(a) of this section;~~

~~(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;~~

~~(e) A certification that the project shall be designed and operated in a manner that is consistent with:~~

~~1. The proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. The information submitted in the notice or permit application; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy; and~~

~~(f) Demonstration that the PCP shall not have an adverse air~~

~~quality impact.~~

~~1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet; and~~

~~2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.~~

~~(4) Notice process for listed projects. The owner or operator:~~

~~(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and~~

~~(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.~~

~~(5) Permitting process for unlisted projects.~~

~~(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project consistent with 40 C.F.R. 51.160 and 51.161. These procedures shall include the cabinet providing the public with:~~

~~1. Notice of the proposed approval;~~

~~2. Access to the environmentally beneficial analysis and the air quality analysis; and~~

~~3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.~~

~~(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.~~

~~(6) Operational requirements. Upon installation of a PCP, the owner or operator shall comply with the requirements of this subsection.~~

~~(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:~~

~~1. Proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(b) Recordkeeping to prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:~~

~~1. The environmentally beneficial analysis;~~

~~2. The air quality impacts analysis; and,~~

~~3. The monitoring and other emissions records.~~

~~(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.~~

~~(d) Generation of emissions reduction credits.~~

~~1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion;~~

~~2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent;~~

~~3. For generating offsets, the reductions shall be federally enforceable; and~~

~~4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~Section 23~~] Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project.

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 16(4) of this administrative regulation concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit,

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown and malfunction; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source,

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period;

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions will be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[~~(221)~~] or under the Act, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shutdown after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format or another acceptable format approved by the cabinet;

(i) A requirement for the owner or operator to submit the reports required under subsection (13) of this section by the required deadlines; and

(j) Other requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and

imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the

permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.

3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a level that is determined to be.

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions;

(v) Cost effective emissions control alternatives; and

(vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period, and

2. The cabinet has not already adjusted for such requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions that cause the source's emissions to equal or exceed its PAL;

2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, exceeds the PAL; and

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years;

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be·

a. Approved by the cabinet; and

b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;

3 The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6 Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3 CPMS or PEMS; and

4. Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (g) of this subsection, at the time of permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; or

2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically-valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy the deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 52.001, certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, with a PAL that complies with the requirements of this section.

Section 21 [24] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "40 C.F.R. Part 51, Appendix W to Part 51 - Guideline on Air Quality Models, as published in the Code of Federal Regulations, July 1, 2003".

(b) "40 C F.R. Part 58, Appendix B to Part 58 - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, as published in the Code of Federal Regulations, July 1, 2003".

(c) "40 C.F.R. Part 60, Appendix B to Part 60 - Performance Specifications, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard,

Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3) Copies of the Code of Federal Regulations and the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: September 14, 2007

FILED WITH LRC: September 28, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this ordinary administrative regulation will be held on November 27, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on November 30, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the prevention of significant deterioration of ambient air quality (PSD), and applies to major stationary sources and major modifications constructing in areas designated as either attainment or unclassified.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal PSD program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no more stringent than the federal mandate, codified in 40 C.F.R. 51.166.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the list of exempted major stationary sources codified in 40 C.F.R Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. In addition, the amendment removes the existing standards and requirements for clean units (CU) and pollution control projects (PCP) that have been vacated at the federal level in a D C. Court of Appeals decision.

(b) The necessity of the amendment to this administrative regulation: These regulatory revisions are necessary in order to implement the changes in Kentucky in response to changes in the federal rules.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky's federally-approved PSD State Implementation Plan (SIP) provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth.

(d) How the amendment will assist in the effective administration of statutes: The emergency administrative regulation is in effect for 180 days or until the identical ordinary administrative regulation becomes effective, whichever occurs first.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The amendment expands the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with this administrative regulation. This amendment affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements.

(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 additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry will increase and support the nation's efforts toward energy independence.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability and compliance requirements that are tiered in this administrative regulation are basically identical to the federal PSD and NSR rules.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S C. 7401-7671q (Clean Air Act) provides the statutory mandate codified in 40 C.F.R. Part 51.166, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.

2. State compliance standards. The state compliance stan-

dards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal PSD mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification will not cause emissions to increase by specific incremental amounts; that the source's emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS); and that the source will use best available control technology (BACT) to control emissions. The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is basically identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 Division for Air Quality will continue to implement and enforce the Prevention of Significant Deterioration (PSD) program in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.166, U.S.C. 7401-7671q.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 51, Subpart I, 51.165, 51.166(g), 52.21, 52.21(r), 60, 61, 81, Subpart D, 81.318, 42 U.S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410

STATUTORY AUTHORITY: KRS 224.10-100[~~, 40 C.F.R. 51.165~~], 42 U.S.C. 7401-7671q (Clean Air Act)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are neither different nor more stringent than the federal regulation 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or any project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) [~~subsections (3) or (4)~~] of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. [~~Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit as provided in Sections 11 and 12 of this administrative regulation, without causing the unit to lose its clean unit designation, an emissions increase shall not be deemed to occur.~~

~~4.~~] Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 to 2[3] of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1[~~(146)~~].

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11[14] of this administrative regulation.

[~~(4) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 13 of this administrative regulation.~~]

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

(a) Coal cleaning plants with thermal dryers;
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants,
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants, furnace process;
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
(u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 ug /m³	5 ug /m³	–	25 ug /m³	–
PM_{10}	1.0 ug /m³	5 ug /m³	–	–	–
Nitrogen Dioxide	1.0 ug /m³	–	–	–	–
Carbon Monoxide	–	–	0.5 mg/m³	–	2 mg/m³

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO_2), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. appendix W, "Guideline on Air Quality Models".

(4) For sources of NOx, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO_2) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs locating outside a designated ozone nonattainment area shall be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted under the applicable provisions of this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:
1. Meet an emissions limitation;
2. Meet a design, operational or equipment standard; or
3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applica-

ble emissions limitations and standards specified in Title 401, Chapters 50 to 63, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NOx emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced, or offset, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NOx to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1;
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NOx.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be:

(a) The emissions limitations in effect at the time the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if.

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.

(c) Baseline actual emissions as defined in 401 KAR 51 001, Section 1[~~(20)~~], shall not be used for determining the baseline for emissions offsets.

(2) Credit for emissions offsets. Credit for emissions offset may be allowed for existing control that goes beyond the control required under 401 KAR Chapters 50 to 68 and existing federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by:

1. Obtaining emissions reductions of the air pollutant from the same source or other sources in the same nonattainment area; or

2. From sources in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if no applicable emissions limitation exists. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.

(c) If an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS

and other emissions limitations may not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52.020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(202)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project,

2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if requested and the applicant demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982, and if the owner or operator demonstrates that the rescission will not

violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review - applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U S C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution, or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

a. The emissions from the source will not exceed the allowable emissions.[~~, The emissions from the source will not exceed the allowable emissions,~~]

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to paragraph (b) of this subsection within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section. The cabinet shall follow the procedures at 40 C.F.R. 52.21(r) as in effect on July 1, 2003, to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet may take into account the overriding factors of:

1. The cost of compliance;

2. The time necessary for compliance;

3. The energy and nonair quality environmental impacts of compliance; and

4 The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. [~~Clean Unit Test for Emissions Units that are Subject to LAER. For any emissions unit that is subject to LAER and for which the cabinet has issued a major NSR permit in the past~~

~~ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined according to subsection (3) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined according to subsection (4) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with LAER in the permit for the unit; and~~

~~2. Alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with LAER in the permit for the unit; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.~~

~~(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(g)1. For emissions units with PSD permits, the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for meeting LAER in subsections (3) to (8) of this section if:~~

~~a. The emissions unit has received a PSD permit that complies with BACT within the last ten (10) years; and~~

~~b. The emissions unit is located in an area that was redesignated as nonattainment for the relevant pollutant after the PSD permit is issued and before the SIP including the clean unit provisions become effective.~~

~~2. For those emissions units, the requirements for the LAER determination made under subsection (1)(c) of this section shall apply to the BACT permit terms and conditions.~~

~~3. The requirements of subsection (6)(a)3 of this section shall not apply to emissions units that qualify for clean unit status according to this paragraph.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.~~

~~2. Qualifying air pollution control technologies requirement. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:~~

~~a. The control technology shall achieve the LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;~~

~~b. The emissions unit shall not be eligible for the clean unit designation if the LAER determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and~~

~~c. The owner or operator shall have made an investment to install the control technology. An investment includes expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 12 of this administrative regulation.~~

~~1. An owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020 for an emissions unit that is requalifying for clean unit designation.~~

~~2. The permit shall require compliance with the current day LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.~~

~~(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day LAER shall be.~~

~~1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and~~

~~2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.~~

~~(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.~~

~~(4) Clean unit expiration. The date that the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current day LAER, the expiration date of the clean unit designation shall be:~~

~~1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:~~

~~1. Ten (10) years after the effective date; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (6) of this section.~~

~~(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.~~

~~(b) The effective date of the clean unit designation.~~

~~1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the~~

~~first opportunity the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of the clean unit designation.~~

~~1. If the exact expiration date is not known at the date the clean unit designation is initially recorded in the Title V permit, the permit shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date, and~~

~~3. If originally absent for the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with LAER and any physical or operational characteristics that formed the basis for the LAER determination.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.~~

~~(6) Maintaining the clean unit designation.~~

~~(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.~~

~~1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit;~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination;~~

~~3. The clean unit shall not emit above a level that has been offset.~~

~~4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and~~

~~5. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(7) Offsets and netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for generating offsets, unless:~~

~~1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(8) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 12. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to LAER. For an emissions unit that does not qualify as a clean unit under Section 11 of this administrative regulation but is achieving a level of emissions control comparable to LAER, the owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER according to subsection (3) of this section; and~~

~~2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER according to subsection (7)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.~~

~~(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit were never a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements of this paragraph.~~

~~1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:~~

~~a. Demonstrate that an emissions unit's control technology is comparable to LAER according to the requirements of subsection (3) of this section;~~

~~b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and~~

~~c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:~~

~~a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~b. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land~~

~~manager and for which information is available to the general public.~~

~~3. Date of installation requirement.~~

~~a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.~~

~~b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.~~

~~(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 11 of this administrative regulation.~~

~~1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current day LAER.~~

~~2. The emissions unit shall meet the requirements in subsection (2)(a)1 and 2 of this section.~~

~~(3) Demonstrating control effectiveness comparable to LAER. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to LAER under the provisions of either paragraph (a) or (b) of this subsection.~~

~~(a) Comparison of the control technology to previous LAER determinations.~~

~~1. An emissions unit's control technology shall be presumed to be comparable to LAER if the control technology achieves an emissions limitation that is at least as stringent as one of the five best performing similar sources for which a LAER determination has been made within the preceding five (5) years and for which information has been entered into the RACT/BACT/LAER clearinghouse.~~

~~2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to LAER, the cabinet shall:~~

~~a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period; and~~

~~b. Compare this presumption to any additional LAER determinations of which the cabinet is aware.~~

~~(b) The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER according to this paragraph. The cabinet:~~

~~1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as LAER, and~~

~~2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as LAER after considering the evidence.~~

~~(c) Time of comparison.~~

~~1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:~~

~~a. The LAER requirements that applied at the time the control technology was installed, or~~

~~b. The current day LAER requirements.~~

~~2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current day LAER requirements.~~

~~(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:~~

~~(a) The date that the permit or permit revision required by subsection (6) of this section is issued; or~~

~~(b) The date that the emissions unit's air pollution control technology is placed into service.~~

~~(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.~~

~~(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.~~

~~(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.~~

~~(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.~~

~~(6) Procedures for designating emissions units as clean units.~~

~~(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and~~

~~(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.~~

~~(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies.~~

~~(b) The effective date of clean unit designation.~~

~~1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of clean unit designation.~~

~~1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date, and~~

~~3. If originally absent from the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to LAER and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, according to subsection (8) of this section.~~

~~(8) Maintaining the clean unit designation.~~

~~(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.~~

~~1. To ensure that the control technology continues to achieve emissions control comparable to LAER, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to LAER, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to LAER.~~

~~3. The clean unit shall not emit above a level that has been offset.~~

~~4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.~~

~~5. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one pollutant shall only affect the clean unit designation for that pollutant.~~

~~(9) Offsets and netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for offsets, unless:~~

~~1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall be enforceable as a practical matter.~~

~~(10) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 13. PCP Exclusion Procedural Requirements. For a project to qualify for a PCP exclusion, an owner or operator shall comply with the provisions of this section.~~

~~(1) To request a PCP designation for a project the owner or operator shall:~~

~~(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f), or~~

~~(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f).~~

~~(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:~~

~~(a) An environmentally beneficial analysis.~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act, and~~

~~2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.~~

~~(b) Air quality analysis. The emissions increases from the project shall not:~~

~~1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:~~

~~(a) A description of the project;~~

~~(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases that will result from the project;~~

~~(c) A copy of the environmentally beneficial analysis required by subsection (2)(a) of this section;~~

~~(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;~~

~~(e) A certification that the project shall be designed and operated in a manner that is consistent with:~~

~~1. The proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. The information submitted in the notice or permit application; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(f) Demonstration that the PCP shall not have an adverse air quality impact.~~

~~1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet.~~

~~2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.~~

~~(4) Notice process for listed projects. The owner or operator:~~

~~(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f), and~~

~~(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.~~

~~(5) Permitting process for unlisted projects.~~

~~(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51.001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project according to 401 KAR 52:020. These procedures shall include the cabinet providing the public with:~~

~~1. Notice of the proposed approval;~~

~~2. Access to the environmentally beneficial analysis and the air quality analysis; and~~

~~3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.~~

~~(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.~~

~~(6) Operational requirements. Upon installation of the PCP, the owner or operator shall comply with the requirements of this sub-~~

~~section.~~

~~(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:~~

~~1. Proper industry and engineering practices;~~

~~2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(b) Recordkeeping. To prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:~~

~~1. The environmentally beneficial analysis;~~

~~2. The air quality impacts analysis, and;~~

~~3. The monitoring and other emissions records.~~

~~(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.~~

~~(d) Generation of emissions reduction credits.~~

~~1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase or for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.~~

~~2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent.~~

~~3. For generating offsets, the reductions shall also be federally enforceable.~~

~~4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~Section 14.~~] Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, where:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that.

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period, and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of such emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall.

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[~~(221)~~] or under the Act, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shutdown after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain

the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format or another acceptable format approved by the cabinet;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Other requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3 The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level no greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emis-

sions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions; and

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for such requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c)

to (g) of this subsection, at the time of permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is no correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70 6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 52.001, certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, with a PAL that complies with the requirements of this section.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 28, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this ordinary administrative regulation will be held on November 27, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on November 30, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry ennis@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the nonattainment new source review (NSR) and applies to new construction or modification of major stationary sources in areas designated nonattainment for a specified pollutant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal NSR program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no more stringent than the federal mandate, codified in 40 C.F.R. 51.165.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the list of exempted major sta-

tionary sources codified in 40 C.F.R. Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. In addition, the amendment removes the existing standards and requirements for clean units (CU) and pollution control project (PCP) that have been vacated at the federal level in a D.C. Court of Appeals decision.

(b) The necessity of the amendment to this administrative regulation: These regulatory revisions are necessary in order to implement the changes in Kentucky in response to changes in the federal rules.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky's federally-approved PSD/NSR State Implementation Plan (SIP) provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth.

(d) How the amendment will assist in the effective administration of statutes. The emergency administrative regulation is in effect for 180 days or until the identical ordinary administrative regulation becomes effective, whichever occurs first.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The amendment expands the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with this administrative regulation. This amendment affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements.

(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 additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry will increase and support the nation's efforts toward energy independence.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability and compliance requirements that are tiered in this administrative regulation are basically identical to the federal PSD and NSR rules.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7671q (Clean Air Act); 42 U.S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410, provides the statutory mandate codified in 40 C.F.R. Part 52.21, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.

2. State compliance standards The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal NSR mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification of the source will not cause a net increase in pollution; neither will the source create a delay in attainment of the NAAQS; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is basically identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224 20-100, 224.20-110, 224 20-120, 42 U S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410, provides the statutory mandate codified in 40 C.F.R. Part 52.21.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-

100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid Rain Program" means the national program for reducing SO_2 and NOx emissions established under 42 U S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U S C. 7401 to 7671q.

(3) "Actual emissions" means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected states" means states that:

(a) Border Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Are situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined in KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined in KRS 224 01-010(3).

(11) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S EPA's satisfaction to produce adequate results for its determination of compliance.

(13) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(14) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined in KRS 224.01-010.

(18) "Capital expenditure" is defined in 40 C.F.R 60.2.

(19) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(20) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(22) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(24) "Designated representative" means a person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accordance with 40 C.F.R. 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official" means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source which.

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and

(c) Shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50 038, made effective April 12, 1995.

(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.

(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(32) "Equivalent method" means a method of sampling and analyzing for an air pollutant, that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52,

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) Standards or requirements of the Acid Rain Program;

(f) Requirements established pursuant to 42 U S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for temporary sources permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e),

(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made.

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52.040, and for which a final determination has been made

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" means a stationary source or a group of stationary sources that emits or has a potential to emit at or above a major source threshold and:

(a) For HAPs:

1. Is located within a contiguous area;

2. Is under common control;

3. Includes all fugitive HAP emissions in determining if the source is major; and

4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:

a. Oil or gas exploration or production wells and the associated equipment; or

b. Pipeline compressors or pump stations; and

(b) For regulated air pollutants other than HAPs:

1. Is located on one (1) or more contiguous or adjacent properties;

2. Is under common control;

3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and

4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause.

a. Coal cleaning plants (with thermal dryers);

b. Kraft pulp mills;

c. Portland cement plants;

d. Primary zinc smelters;

e. Iron and steel mills;

f. Primary aluminum ore reduction plants;

g. Primary copper smelters;

h. Municipal incinerators capable of charging more than 250 tons of refuse per day;

i. Hydrofluoric, sulfuric, or nitric acid plants;

j. Petroleum refineries,

k. Lime plants;

l. Phosphate rock processing plants;

m. Coke oven batteries;

n. Sulfur recovery plants;

o. Carbon black plants (furnace process);

p. Primary lead smelters;

q. Fuel conversion plants;

r. Sintering plants;

s. Secondary metal production plants;

t. Chemical process plants, <u>except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140</u>;

u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;

v. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;

w. Taconite ore processing plants;

x. Glass fiber processing plants;

y Charcoal production plants;

z. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).

(46) "Major source threshold" means PTE:

(a) For HAPs:

1. Ten (10) tons per year or more of a single HAP;

2. Twenty-five (25) tons per year or more of combined HAPs; or

3. A lesser quantity that the U.S. EPA establishes in a final rulemaking; or

(b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:

1. For ozone nonattainment areas:

a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;

b. Fifty (50) tons per year or more in areas classified as serious;

c. Twenty-five (25) tons per year or more in areas classified as severe; or

d. Ten (10) tons per year or more in areas classified as extreme;

2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels; or

3. Seventy (70) tons per year or more of particulate matter (PM_{10}) for PM_{10} nonattainment areas classified as serious.

(47) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(48) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51 010.

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(51) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission

of any regulated air pollutant into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(52) "Modification under Title I of the Act" means a change at a facility that would constitute a modification under 42 U.S C. 7470 to 7492 or 42 U.S.C. 7501 to 7515.

(53) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(54) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(55) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design where:

(a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation is enforceable as a practical matter; and

(b) This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for forty-five (45) day review period.

(58) "Reconstruction" means the replacement of components of an existing affected facility to the extent that

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 68.

(59) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N, 40 C.F.R. Part 53, 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B, or 40 C.F.R Part 63, Appendices A to D.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act),

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411;

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(64) "Shutdown" means the cessation of an operation.

(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard promulgated in the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(67) "Start-up" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, which has been approved by the U.S EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

(72) "Title V permit" means a permit issued pursuant to 401 KAR 52.020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.

(73) "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).

(74) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C F.R. Part 50, Appendix B.

(75) "tpy" means ton per year.

(76) "U.S. EPA" means the U.S. Environmental Protection Agency

(77) "Volatile organic compound" or "VOC" is defined in 40 C.F.R 51.100(s).

(78) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor

transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: September 14, 2007
FILED WITH LRC: September 28, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this ordinary administrative regulation will be held on November 27, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on November 30, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 52

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in 401 KAR Chapter 52.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions regulation assists the public and the regulated community by defining the terms used in 401 KAR Chapter 52.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the definitions to mirror recent amendments at the federal level (72 Fed. Reg 24077, May 1, 2007) It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment revises the definition of terms used in Kentucky's Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are based upon federal revisions affecting Kentucky's PSD and NSR regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendments will provide the definitions of terms used in 401 KAR Chapter 52.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation does not directly impact individuals, organizations, or state and local governments.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation does not directly impact individuals, organizations, or state and local governments.

(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 regulation does not directly impact individuals, organizations, or state and local governments.

(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 costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits related to this regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This regulation will not require an increase in fees or funding in order to implement its provisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this regulation provides the definitions of terms for 401 KAR Chapter 52 and imposes no requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation. However, recent changes in the federal PSD/NSR Program make it necessary to revise the regulation in order to ensure program parity.

2 State compliance standards. The state compliance standards are found in KRS 224.01-010, 224.10-100(5), 224 20-100, 224.20-110, and 224.20-120.

3 Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this regulation. However, changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no requirements because it only provides definitions of terms used in 401 KAR Chapter 52.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

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 Division for Air Quality implements this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 224.10-100(5) authorizes the cabinet to promulgate regulations for the prevention, abatement, and control of air pollution. This regulation simply defines the terms used in 401 KAR Chapter 52 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

RELATES TO: KRS 532 060, [~~196 035, 197.020,~~] 532.100

STATUTORY AUTHORITY: KRS 196 035, 197.020, [~~532.060,~~] 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails. This administrative regulation establishes the definitions used in 501 KAR Chapter 2, which implements the required housing program.

Section 1. Definitions. (1) "Assessment and Classification Center" or "AC Center" means the units at Roederer Correctional Complex [~~Kentucky State Reformatory~~] and Kentucky Correctional Institution for Women which initially receive all convicted felons, except for those sentenced to the death penalty, into the Kentucky Adult Correctional System.

[~~(2) "Boot camp" means the voluntary program for offenders that incorporates group and individual counseling, academics, and physically strenuous work and exercise that is operated at Roederer Correctional Complex.~~]

(2)[~~(3)~~] "Class C felon" means an inmate convicted of a Class C felony that meets the requirements established in KRS 532.100(4)(b)

(3)[~~(4)~~] "Class D felon" means an inmate convicted of a Class D felony that meets the requirements established in KRS 532.100(4)(a) or (b).

(4)[~~(5)~~] "Classification branch manager" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs [~~oversees the Classification Branch and the classification process~~].

(5)[~~(6)~~] "Close custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(6)[~~(7)~~] "Community custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6 080.

[~~(8) "Community detention branch manager" means the one who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs.~~]

(7)[~~(9)~~] "Controlled intake inmate" means a convicted felon who is entering into the Kentucky Adult Correctional System.

(8)[~~(10)~~] "Educational good time" means a credit on an inmate's sentence for an educational accomplishment pursuant to KRS 197 045(1) [~~197.045~~].

(9)[~~(11)~~] "Escape" is defined in KRS 520 010(5).

(10) "Exceptional good time" means a credit on an inmate's sentence for performing an exceptionally meritorious service or a duty of outstanding importance pursuant to KRS 197.045(3).

(11) [~~(12)~~] "Jail" is defined in KRS 441.005(1).

(12) "KOMS" means Kentucky Offender Management System.

(13) "Maximum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(14) "Medium custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6.080.

(15) "Meritorious good time" means a credit on an inmate's sentence for good conduct pursuant to KRS 197.045(3) [~~for performing an exceptionally meritorious service or a duty of outstanding importance pursuant to KRS 197 045~~].

(16) "Minimum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(17) "Restricted custody" means that the inmate meets the requirements for that subcategory of the minimum custody classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6.080.

(18) "Statutory good time" means a credit on an inmate's sentence [~~for good conduct~~] pursuant to KRS 197.045(1) [~~197.045~~].

(19) "Waiver" means that the department has granted the county an exemption from housing any Class D or Class C felons in its county jail pursuant to KRS 532 100

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A 220(6)(a).

JOHN D. REES, Chairman

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 501 KAR Chapter 2, gov-

eming the housing of Class C and D felons in county jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 532 100.

(c) How this administrative regulation conforms to the content of the authorizing statues: Establishes definitions for the operation of the Class C and D felon program required by KRS 532.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes Establishes definitions for the operation of the Class C and D felon 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: It deletes unused definitions, adds definition for "KOMS," and clarifies the definitions regarding good time.

(b) The necessity of the amendment to this administrative regulation: To update the definitions for the Class C and D program in local jails.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes· It provides current and clear definitions for the administration of the Class C and D program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 additional action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)· They will all receive better understanding of the program and its requirements by having updated and clarified definitions.

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

(a) Initially: No cost

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. Definitions apply equally to all involved in the housing program.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 532.100

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Other Explanation: See (4)(a)-(d) for explanation.

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:030. Administration.

RELATES TO KRS [~~196.035, 197.020,~~] 532.100

STATUTORY AUTHORITY. KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY. KRS 523 100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails. This [~~proposed~~] administrative regulation establishes [~~sets forth~~] the purpose of this program and the division responsible for the administration of the program.

Section 1. Purpose. This program shall be administered by the Division of Local Facilities.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regu-

lation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 501 KAR Chapter 2, governing the housing of Class C and D felons in county jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 532.100.

(c) How this administrative regulation conforms to the content of the authorizing statues: Establishes definitions for the operation of the Class C and D felon program required by KRS 532.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes definitions for the operation of the Class C and D felon 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: It deletes unused definitions, adds definition for "KOMS," and clarifies the definitions regarding good time.

(b) The necessity of the amendment to this administrative regulation: To update the definitions for the Class C and D program in local jails.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for the administration of the Class C and D program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 additional action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) They will all receive better understanding of the program and its requirements by having updated and clarified definitions.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. Definitions apply equally to all involved in the housing program.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 532.100

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Other Explanation: See (4)(a)-(d) for explanation.

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:040. Waivers.

RELATES TO: KRS [~~196.035, 197.020(1),~~] 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020(1), 532.100(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to grant a waiver to any county that chooses not to house Class D and Class C felons in its county jail. This administrative regulation establishes the process for a county to request a waiver from the department and the effect of the waiver on that county's Class D and Class C felons.

Section 1. Request for Waivers; Effect of Waivers. (1) The waiver request shall be signed by the county judge executive and jailer.

(2) Once granted, the wavier shall remain in effect until the county notifies the department in writing, and signed by the county judge executive and jailer, to terminate the waiver.

Section 2. Controlled Intake. (1) For a Class D or Class C felon in a county with a waiver, the department:

(a) May transfer the felon directly to a county jail which houses Class D or Class C felons, if space is available; or

(b) Shall consider the felon, if not transferred directly, a controlled intake inmate and process the inmate through the AC Center pursuant to CPP 17.3, incorporated by reference in 501 KAR 6.020.

(2) A computer listing shall be maintained at the AC Center of all Class D and Class C felons convicted in counties granted waivers.

(3) For a Class D or Class C felon considered a controlled intake inmate, the Classification Branch Manager [~~community detention branch manager~~] shall transfer the felon to a county jail if a jail bed becomes available.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A 220(6)(a).

JOHN D. REES Chairman

APPROVED BY AGENCY: October 12, 207

FILED WITH LRC: October 15, 2007 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) co working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the waiver process for county jails that choose not to house Class C and D felons.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 532.100.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes the waiver process required by KRS 532.100(4)(a) for county jails that choose not to house Class C and D felons.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the waiver process for county jails that choose not to house Class C and D felons.

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

(a) How the amendment will change this existing administrative regulation: It replaces "community detention branch manager" with the currently used "Classification Branch Manager."

(b) The necessity of the amendment to this administrative regulation: To update the title of the participating DOC staff member.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It uses the correct title of the DOC staff member involved in the waiver process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 additional action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will all receive better understanding of the program and its requirements by having updated terminology in the regulation.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. Waiver process applies equally to all involved in the housing program.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 532.100.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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? The waiver process creates minimal additional costs.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Other Explanation: See (4)(a)-(d) for explanation.

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:050. Transfer requests.

RELATES TO: KRS [~~196.035, 197.020(1),~~] 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020(1), 532.100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5) establishes the circumstances in which a county jailer may request the Department of Corrections to transfer a Class D or Class C felon housed in the county jail to a state corrections institution. This administrative regulation establishes the process for the jailer to request a transfer.

Section 1. Eligibility. Any county housing qualified Class D and Class C felons pursuant to KRS 532.100(4) shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a county jail to cease housing Class D and Class D felons

Section 2. Transfer Requests. (1) To request a transfer of a Class D or Class C felon housed in a county jail to a state corrections institution pursuant to KRS 532.100(5), the county jailer shall:

(a) Request the transfer on an "Inmate Priority Movement Form" [~~a Request for Transfer" form~~], and

(b) Submit the form to the Division of Local Facilities, which shall review the form and forward it with a recommendation to the commissioner.

(2) The commissioner or his designee shall approve or deny the request.

(a) If approved, a copy of the form shall be forwarded to the Classification Branch Manager so that an appropriate transfer can be arranged.

(b) If denied, a copy of the form shall be returned to the jailer who may appeal the denial as provided by KRS 532.100(5).

Section 3. Incorporation by Reference. (1) "Inmate Priority Movement Form " 6/07, [~~"Request for Transfer, 2/95"~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, Division of Local Facilities [~~Office of General Counsel~~], 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for a county jailer to request that a Class C or D felon be transferred from the county jail to a state correctional institution.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 532.100(5).

(c) How this administrative regulation conforms to the content of the authorizing statues. It establishes the transfer request process required by KRS 532.100(5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the process for county jails to request that a Class C or D felon be transferred to a state correctional institution

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

(a) How the amendment will change this existing administrative regulation: It updates the transfer request form and the location where it can be obtained.

(b) The necessity of the amendment to this administrative regulation: To update the form used to request a transfer.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It updates the form used to request a transfer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including sixteen 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails-of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 additional action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A jailer will be able to transfer to a state institution a Class C or D felon presenting an escape risk, who is a danger to himself or others, who is an extreme security risk, or who needs protective custody

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

(a) Initially: No cost.

(b) On a continuing basis No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. Transfer request process applies equally to all involved in the housing program.

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? Department of Cor-

rections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 532.100.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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? For each inmate transferred, the state will not have to pay the $30.94 per diem to the local jail. However, it costs the state on average $49.79 per day to incarcerate an inmate.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Other Explanation: See (4)(a)-(d) for explanation.

Revenues (+/-)

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:060. Procedures for housing of Class D and Class C felons.

RELATES TO: KRS 196 035, 197.020, 532 100

STATUTORY AUTHORITY: KRS [~~196.035, 197.020,~~] 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Submission of Documents for Class D Felons. In any county jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

(1) Picture [~~with negative~~] which shall be updated annually;

(2) [~~Fingerprints;~~

~~(3)~~] Any detainers;

(3) [~~(4)~~] Any incident or disciplinary reports; and

(4) [~~(5)~~] Body identification sheet.

Section 2. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody to the Class D felon.

(2) The AC Center staff shall forward the inmate file to Offender Information Branch, Central Office, which shall audit the file within five (5) working days of receipt.

(3) Offender information shall forward the file to the Central Office Offender Information [~~Director of Local Facilities~~], who shall notify the jailer of the custody assignment.

(4) If the custody assigned is minimum or community, the Class D felon may participate in community service work or any program offered outside the secure perimeter of the jail.

(5) If the custody assigned is restricted, the Class D felon may:

(a) Only participate in community service work under direct supervision of jail staff; and

(b) Not participate in any outside program.

(6) If the custody assigned is medium, close, or maximum, the Class D felon shall not be eligible to participate in any program or work outside the secure perimeter of the jail.

(7) The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Classification Branch Manager.

Section 3. Assignment of Class C Felons (1) The assessment and classification center shall identify [~~potential~~] Class C felons and the Division of Local Facilities shall inform the jailer of any felon who qualifies under KRS 532.100(4).

(2) The jailer shall forward, within ten (10) working days of receiving the notice, the felon's fingerprints and photographs to the assessment and classification center, in order that the Class C felon may be processed into the program. The photograph shall be updated annually.

(3) The assessment center [~~director of local facilities~~] shall notify the jailer when an inmate has been assigned as a Class C felon.

(4) Class C felons, as inmates with a community custody level as required by KRS 532.100, may perform community service work.

Section 4. Assessment Summary Reports. Prior to the meeting of the Parole Board, jail staff shall prepare and submit an assessment summary report on each Class D and Class C felon to the Offender Information Branch via KOMS or electronically

Section 5. Transportation. Jail staff shall be responsible for the transportation of a Class D or Class C felon except as specified in KRS 431.215(1) and 441.510.

Section 6. Release Procedures. (1) The release of a Class D or Class C felon shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6 020.

(2) Jail staff shall not release a Class D or Class C felon to any other county without advance notice to the Director of Local Facilities or designee and entering the external movement into KOMS. A Class D or Class C felon shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail staff shall notify the Director of Local Facilities or the Offender Information Branch of any detainer or holder lodged against the Class D or Class C felon by another jurisdiction.

[~~Section 7. Transfer to Boot Camp Program. (1) The jailer shall provide each inmate with information concerning the program during the inmate's orientation at the jail.~~

~~(2) Any inmate interested in the program shall apply to the assessment and classification center.~~

~~(3) Staff at the assessment and classification center shall review the file to determine if the inmate meets the basic eligibility criteria for the program. If the basic criteria have been met, the inmate shall be transferred to the assessment and classification center for additional tests. If the inmate does not meet physical and psychological requirements, he shall be returned to the jail of origin.~~]

Section 7. [~~8.~~] Furlough Program. (1) The Classification Branch Manager [~~Community Detention Branch Manager~~] shall have the authority and responsibility to grant and monitor any furloughs of a Class D or Class C Felon.

(2) Eligibility for a furlough shall be determined as follows.

(a) The furlough of a Class D or Class C felon shall be a privilege, not a right.

(b) To be considered for a furlough, a community or minimum custody Class D felon or a Class C felon shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter six (6) months after his final sentencing date. A furlough shall not exceed eight (8) furlough days each calendar year. There shall be a minimum of sixty (60)

days between furloughs.

(d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody Class D or a Class C felon shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(e) A probation or parole violator who is a community or minimum custody Class D or a Class C felon, who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, six (6) months after his commitment date. A furlough shall not exceed eight (8) furlough days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(f) To be considered for a furlough, a Class D or Class C felon shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6.020, with the exception of the six (6) continuous months of minimum or community custody requirement.

Section 8 [~~9.~~] Escape. If a Class D or Class C felon escapes, the procedures established in CPP 25 6, incorporated by reference in 501 KAR 6:020, shall be followed.

Section 9 [~~10.~~] Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(6). The jail shall pay for routine medical and medication expenses. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department.

Section 10. [~~11.~~] Inmate Pay. A Class D or Class C felon on a work assignment shall be paid in accordance with CPP 19.3, incorporated by reference in 501 KAR 6:020.

Section 11 [~~12.~~] Good Time. For a Class D or Class C felon housed in a county jail, the awarding of:

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)-(2),

(2) Meritorious good time shall follow procedures established in KRS 197.045(3) and CPP 15.3, incorporated by reference in 501 KAR 6 020.

(3) Educational good time shall follow procedures established in CPP 20.1, incorporated by reference in 501 KAR 6:020.

Section 12 [~~13.~~] Annual Photograph. The jailer or a jail staff member shall take a photograph each year of each Class D and Class C inmate and immediately send it by United States mail to Offender Information Services, Central Office, P.O. Box 2400, Frankfort, Kentucky 40602 via KOMS or electronically

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Commissioner, Chairman

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 10 a.m.

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CONTACT PERSON. Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for housing Class C and D felons in county jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 532.100(4)

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes the procedures for housing Class C and D felons in county jails as required by KRS 532.100(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedures for housing Class C and D felons in county jails.

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

(a) How the amendment will change this existing administrative regulation: It streamlines the documentation requirements for the county jails involved in the program and deletes Section 7 regarding the Boot Camp Program as it is no longer in use.

(b) The necessity of the amendment to this administrative regulation: To streamline the documentation requirements and to delete obsolete portions of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It streamlines the documentation requirements for inmates involved in the program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jail staff will have to enter release information into KOMS before releasing a Class C or D felon to another county.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A more efficient and effective computer offender management system.

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

(a) Initially: No cost for the amendments – the KOMS system is already paid for via a federal grant

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

established or increased.

(9) TIERING: Is tiering applied? No. Documentation requirements apply equally to all jails involved in program.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 532.100.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-).

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:070. Work release.

RELATES TO. KRS 533 010(14), 533 025

STATUTORY AUTHORITY: KRS 196 035, 197 020, 533 010(14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 533.010(14) requires the Department of Corrections to promulgate an administrative regulation to identify procedures for implementing work release privileges granted by this statute. This administrative regulation establishes work release procedures.

Section 1. The criteria to be used in the determination of granting work release shall include the following:

(1) The defendant granted work privileges shall have a suitable job placement, at a lawful wage, as approved by the sentencing court.

(2) The defendant's job placement shall be within the boundaries of the Commonwealth and shall not require travel outside of the Commonwealth.

(3) The defendant shall provide or arrange transportation to and from the employment site in a lawful manner.

(4) The defendant's employer shall be willing to cooperate with all law enforcement agencies in the verification of the conditions of the defendant's work release.

(5) If defendant is paying for a part of his incarceration through court-ordered work release, it shall be the responsibility of the Jailer or designee to notify the Department of Corrections. The amount paid by the defendant towards his incarceration shall be forwarded to the Department of Corrections on a monthly basis along with the jail housing bill. [~~The defendant shall pay for the cost of his incarceration as set by the sentencing court.~~]

Section 2. The jailer may deny work release privileges to a defendant for violating any duly promulgated or adopted rule of the jail governing inmate conduct or work release including:

(1) The defendant returning to the jail under the influence of drugs or alcohol,[.]

(2) The defendant promoting or attempting to promote contraband; and[.]

(3) Failure to notify the jailer of any change in the status of his employment.

Section 3. Upon denial of work release privileges, a written report shall be completed stating the reasons for the suspension of these privileges and citing the rule or regulation that has been violated.

(1) The jailer shall provide a copy of the report to the defendant within twenty-four (24) hours

(2) The jailer shall file the report and supporting documentation with the court of jurisdiction within the time specified in KRS 533 010(13).

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Commissioner, Chairman,

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON. Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to implement work release privileges for alternative sentence inmates and Class D and C felons in county jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 533 010(14) and 533.025.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes the work release procedures for county jails as required by KRS 532.010(14) and 533 025.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the work release procedures for Class D and C felons in county jails.

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

(a) How the amendment will change this existing administrative regulation: It requires the jailer to notify the department if an alternative sentence inmate is paying for part of his incarceration through court-ordered work release at a private job, and to forward the amount of the payment to the department.

(b) The necessity of the amendment to this administrative regulation: To implement KRS 533 025(2).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: The department will be notified if an alternative sentence inmate is paying for part of his incarceration due to work release at a private job so that the Department can deduct that amount from the per diem amount paid to the jail for that inmate. It will ensure that the state does not overpay the jails for prisoners involved in work release to private jobs

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are approximately 250 alternative sentence inmates paying for part of their incarceration due to work release to private jobs. The regulation also affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails-of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) 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 jailer will have to notify the department if an alternative sentence inmate is paying for part of his incarceration through court-ordered work release, and forward the amount of the payment to the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The department will be notified if an alternative sentence inmate is paying for part of his incarceration due to work release at a private job so that the Department can deduct that amount from the per diem amount paid to the jail for that inmate. It will ensure that the state does not overpay the jails for prisoners involved in work release to private jobs.

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

(a) Initially: No cost

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. Reporting requirements apply equally to all jails involved in program.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 533 010, 533 025.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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? Currently, there are approximately 250 alternative sentence inmates paying for part of their incarceration due to work release to private jobs. The amount they pay is set by the court, pursuant to KRS 533.010(15). Any amount they pay saves the state that portion of the $30.94 daily 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? Approximately the same as in (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

RELATES TO: KRS 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99, 152

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Ceiling" means the overhead area in any area of the jail [~~the multipurpose room~~] which is below the secure deck.

(2) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(3) "Deck" means the secure overhead area of the jail, which is part of the security perimeter.

(4) "Department" is defined in KRS 441.005(5).

(5) "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(6) "Direct supervision area" means an area used to house seventy (70) or fewer prisoners in which a corrections officer is always present and directly supervising the prisoners.

(7) "Dormitory" means;

(a) An area equipped for housing not less than three (3) or more than thirty-six (36) persons; or

(b) If in a direct supervision area, an area equipped for housing not more than seventy (70) persons

(8) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(9) "Jail" is defined in KRS 441.005(1).

(10) "Jail Administrator" means the official appointed by a regional jail board, charged with the responsibility of administering the regional jail

(11)[(10)] "Jail personnel" is defined in KRS 441.005(6)

(12)[(11)] "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail,

(b) A department as defined in KRS 67B 020(1); or

(c) A correctional services division as created by KRS 67A.028.

(13)[(12)] "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners in the jail's custody

(14)[(13)] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(15)[(14)] "Penal type" means furnishings, fixtures, and equipment approved by the department.

(16)[(15)] "Prisoner" is defined in KRS 441 005(3).

(17)[(16)] "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(18) "PREA" means the Prison Rape Elimination Act, 42 U.S C. 15601-15609

(19)[(17)] "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(20) [(18)] "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.

(21)[(19)] "Sally port" means an enclosed, covered vehicular drive-in, located adjacent to the jail intake area [a vehicular drive-in, which shall be located in close proximity to the jail intake area].

(22)[(20)] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(23)[(21)] "Security personnel" means full-time and part-time personnel operating within a security area.

(24) "Special Needs Area" means an area used to hold one (1) person for direct observation when displaying expressions, including but not limited to, suicidal and violent tendencies.

(25)[(22)] "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, and other body cavities.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A 120(3) and 13A 220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

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CONTACT PERSON: Karen S Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 501 KAR Chapter 3 concerning full-service jail facilities (jails that house state prisoners).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055

(c) How this administrative regulation conforms to the content of the authorizing statues: Establishes definitions for 501 KAR Chapter 3, which establishes minimum standards for jails that house state prisoners as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes definitions for the regulations concerning full-service jails.

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

(a) How the amendment will change this existing administrative regulation· It adds definitions for "jail administrator" and "special needs area" and clarifies the definitions for "ceiling" and "sally port."

(b) The necessity of the amendment to this administrative regulation: To update the definitions for the full-service jail regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for the full-service jail regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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· For new jails and jails that are being renovated, sally ports will have to adjacent to the jail intake area

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) No additional costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will all receive better understanding of the program and its requirements by having updated and clarified definitions. Security will be enhanced with adjacent sally ports.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. Definitions apply equally to all involved in the full-service jails.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c)

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

Other Explanation: See (4)(a)-(d) for explanation.

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:020. Administration; management.

RELATES TO: KRS 69.210, 202A.091, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth procedures to be followed by jails which elect to house state prisoners for the administration and management of those jails.

Section 1. Policy and Procedure-Organization. (1) The jailer or jail administrator for a jail which elects to house state prisoners shall develop and maintain an organizational chart and an operations manual of policy and procedure that has been adopted by the fiscal court or regional jail authority and filed with the Department of Corrections.

(2) The written policy and procedures manual shall be made available to employees. Employees shall sign documentation attesting they have read and will comply with the jail's policy and procedure manual.

(3) The operations manual shall include but not be limited to the following aspects of the jail's operation.

(a) Administration;[.]

(b) Fiscal management,[-]

(c) Personnel;[-]

(d) Security and control;[.]

(e) Sanitation and management;[-]

(f) Medical services;[-]

(g) Food services;[-]

(h) Emergency and safety procedures,[-]

(i) Classification;[-]

(j) Prisoner programs,[-]

(k) Prisoner services; and[.]

(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Legal Assistance (1) The jailer for a jail which elects to house state prisoners shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing if legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer if the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials

Section 3 Legal Assistance for Regional Jails (1) The jail administrator for a regional jail which elects to house state prisoners shall be represented and advised by the county attorney in the county in which the regional jail is located.

Section 4. [3.] Public Information. (1) The jailer for a jail that elects to house state prisoners shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and prisoners [prisoner] shall have access to the procedures.

(2) With the consent of the prisoner, news media shall be permitted to interview any prisoner as set forth in the jail's policy and procedure manual except if the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for prisoner interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of prisoner information shall include the following:

(a) All requests for information shall be addressed to the jailer;

(b) Governmental agencies shall be provided with information pertinent only to their specific function; and

(c) Private citizens shall only be provided with information supplied to the media.

(6) Information shall not be released that is detrimental to another prisoner.

Section 5 [4.] Information Systems. The jailer for a jail that elects to house state prisoners shall establish and maintain an information system that shall comply with the requirements of this section.

(1) Jail information and prisoner records shall be retained in written form or within computer records.

(2) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time a prisoner record shall be maintained after a prisoner's release from custody and the conditions by which archives are maintained.

(3) A telephonic report to the Department of Corrections shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made within forty-eight (48) hours. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include, but shall not be limited to:

(a) Death of a prisoner;[.]

(b) Attempted suicide that constitutes a serious health situation or suicide,[.]

(c) Serious injury, whether accidental or self-inflicted;[-]

(d) Attempted escape or escape from confinement,[-]

(e) Fire,[-]

(f) Riot,[-]

(g) Battery, whether by a staff member or prisoner,[-]

(h) Sexual assaults;[.]

(i) Occurrence of contagious or infectious disease, or illness within the facility,[-]

(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or prisoners known to be or suspected to be mentally ill or mentally retarded, and[-]

(k) Any serious event that threatens the safety or security of the facility or staff.

(4) All jails electing to house state prisoners shall keep a log of daily activity within the jail.

(5) Each jail electing to house state prisoners shall assign a staff member the responsibility to enter, maintain, and audit the training records for the jail's staff. The assigned staff member shall utilize the current DOC training records management system to meet this responsibility [~~maintain records on the types and hours of training completed by each employee~~]. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

(6) Each jail electing to house state prisoners shall be required to provide the Department of Corrections with a weekly population update that shall include the number of state prisoners, federal prisoners and county prisoners

(7) Each jail electing to house state prisoners shall provide the Department of Corrections with a monthly "PREA" report via KOMS or electronically that shall include the number of incidents of sexual contact between staff, staff on inmate, inmate on staff, and inmate on inmate.

(8) Each jail electing to house state prisoners shall provide the Department of Corrections with all external movements of state prisoners via KOMS or electronically and on a daily basis. This information shall be sent to the Division of Local Facilities.

Section 6. [~~5.~~] Prisoner Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each prisoner. Other information retained in each prisoner's jail record shall include but not be limited to:

(a) Court orders,[-]

(b) Personal property receipts;[.]

(c) Infraction reports;[-]

(d) Reports of disciplinary actions;[.]

(e) Work record and program involvement, and[-]

(f) Unusual occurrences and if death of a prisoner, disposition of the prisoner's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 3:090.

(3) The jailer for a jail which elects to house state prisoners shall ensure that prisoner records are safeguarded in accordance with relevant federal and state laws and administrative regulations.

(4) The jailer shall require that prisoners sign a "Release of Information Consent Form" prior to the release of information, other than public information, to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the prisoner's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information;[-]

(b) Name of facility releasing information;[-]

(c) Specific information to be disclosed;[.]

(d) Purpose of the information,[.]

(e) Date consent form is signed,[-]

(f) Signature of prisoner; and[.]

(g) Signature of employee witnessing the prisoner's signature

(5) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer for a jail which elects to house state prisoners shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY. October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the administration and management of full-service jails (jails that elect to house state prisoners).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum administrative and management standards for full-service jails, as required by KRS 441.055(1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. It establishes minimum administrative and management standards for full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It updates the administrative and management standards to specify the provision of legal assistance for regional jails and to update documentation and reporting requirements.

(b) The necessity of the amendment to this administrative regulation: To update the minimum standards required by KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear administrative and management standards for full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 jails will have to comply with the updated documentation and reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The provision of legal services will be clarified for regional jails; and the jails and the department will have more efficient and effective documentation and reporting.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Other Explanation: See (4)(a)-(d) for explanation.

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:040. Personnel.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes personnel procedures to be followed in full-service jails.

Section 1. Staffing. (1) Each jail shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) If a female prisoner is booked, detained, or otherwise lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2 Qualifications. All persons that work inside the secure perimeter of the jail shall be at least twenty-one (21) years of age [~~Security employees shall be at least twenty-one (21) years of age~~].

Section 3. Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.115, the jailer shall successfully complete a minimum of forty (40) hours annual in-service training certified by the department.

(a) Local corrections training efforts shall be certified by the department.

(b) The Curriculum Advisory Committee shall advise the department on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the department or by computer-based training, if appropriate.

(2) Jail personnel shall attend [~~receive~~] a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or local basis or approved by the department if delivered by another agency.

(3) Jail staff who are assigned to a direct supervision area shall receive forty (40) hours of preservice training related to direct supervision. The training shall be approved by the Department of Corrections.

Section 5. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every staff position.

Section 6. Physical Fitness. The jailer shall ensure a level of physical fitness is maintained that will allow each employee to satisfactorily perform his or her [~~their~~] duties.

Section 7. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee:

(2) The written code of ethics shall be incorporated in the jail's

policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or favor with a prisoner, prisoner's family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;

4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;

5. Discriminate against a prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner to physical or mental abuse;

8. Intentionally demean or humiliate a prisoner;

9. Bring a weapon or an item declared as contraband into the jail without proper authorization;

10. Engage in critical discussion of staff or a prisoner in the presence of another prisoner;

11. Divulge confidential information without proper authorization;

12. Withhold information which threatens the security of the jail, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or another;

14. Engage in a business or profitable enterprise with a prisoner; [or]

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;[.]

16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail that the employee is employed by; or

17. Enter into an intimate, personal relationship with a former prisoner of the jail within six (6) months of that prisoner's release; and

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from a superior;

2. Treat each prisoner in a fair, impartial manner; and

3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes personnel procedures for full-service jails (jails that elect to house Class C and Class D felons).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum personnel standards for full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum personnel standards for full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It authorizes jailers to utilize computer-based training, if appropriate. It also prohibits employees from entering into intimate, personal relationships with prisoners at the jail, or within six months of a prisoner's release.

(b) The necessity of the amendment to this administrative regulation: To update jailer training standards and the code of ethics for jail employees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum personnel standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jailers may be able to receive computer-based jailer training. Employees will not be able to enter into intimate, personal relationships with current prisoners at the jail or prisoners that have been released within six months.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jailers will have additional training opportunities. Amending the code of ethics will enhance the professionalism of the jail staff and increase security at the jails.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Personnel standards apply equally to all full-service jails.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:050. Physical plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes standards and procedures to be followed in the design and construction of full-service jails.

Section 1. Consultation. The department shall provide to a county government seeking to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the jail;

(7) Probable cost for operation of the jail, and

(8) Potential for sharing facilities with adjoining counties.

Section 2. Site Acceptance. A jail shall not be built without site acceptance by the department. The following criteria shall be considered in site selection:

(1) Size;

(2) Proximity to court;

(3) Proximity to community resources;

(4) Availability of public transportation;

(5) Environmental health;

(6) Adequate parking; and

(7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the department for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) For major renovation or new construction or information review purposes, a programming phase, to include:

(a) Evaluation of existing facility;

(b) Population analysis as based on the NIC staffing analysis, and may include, jail's operations, jail programs, court location, and transportation issues;

(c) Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation costs;

(f) Financing alternatives, if applicable;

(g) Design-construction time schedule; and

(h) Summary and recommendations.

(2) A schematic phase containing:

(a) A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;

(b) A scale drawing of the site, locating the building, parking and other facilities one (1) inch equals fifty (50) feet;

(c) Documentation of site as to:

1. Size;

2. Proximity to court;

3. Proximity to community resources;

4. Availability of public transportation;

5. Environmental health;

6. Adequate parking; and

7. Provisions of future expansion.

(d) Sections through the proposed structure indicating deck heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawing of exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

(g) A revised design-construction time schedule.

(3) A design development phase containing:

(a) A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) Construction document phase containing:

(a) Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised if necessary to include changes required by the department; and

(b) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) A contract administration phase containing:

(a) Signed copies of the contracts for construction, financing and bonding;

(b) Signed copies of the construction permits; and

(c) Documentation of required review by other applicable state

agencies.

(6) Every change order shall be submitted to the department for review and approval.

Section 4. Approval of Renovation, Construction Plans and Specifications. (1) Construction shall not begin until the construction document phase has been approved. The department shall:

(a) Review each submission within thirty (30) days of receipt; and

(b) Issue a letter of:

1. Approval;

2. Acceptance with required changes; or

3. Rejection, with reasons stated

(2) Depending on the site of the proposed constructions, renovation or addition, the department may combine two (2) or more phases, as outlined in Section 3 of this administrative regulation, for review and approval.

(3) A change to the plan shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 5. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards for an existing jail if the department determines:

(a) That strict compliance shall cause unreasonable difficulties;

(b) That a waiver shall not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) That compliance shall be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.

(2) If a waiver from a standard is desired, the responsible local authority shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, shall not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 6. Facility Design. All existing jails which are in operation and have prior approval from the department shall be exempt from the requirements of this section until the facility is renovated. Depending upon its size and intended use, each jail shall include within its walls the following facilities and equipment:

(1) Entrances. Each jail shall have three (3) separate and distinct entrances: a public entrance, a prisoner entrance and a service entrance. The department may permit these entrances to be combined.

(a) Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming prisoners. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

1. Provide a clear view of this entrance from the control room by means of direct surveillance or closed circuit TV; and [-]

2. Meet the requirements for handicapped persons.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.

(c) Prisoner entrance. The purpose of this entrance shall be to provide secure and controlled access to the jail for prisoners. The entrance shall be serviced by an enclosed [a] drive-in sally, located adjacent to the jail intake area, and port made secure by electronically or manually operated doors for entrance and exit, or a secure walk-in vestibule and shall incorporate the following design features:

1. Be located adjacent to the booking area,[-]

2. Be monitored from the control room;[-]

3. Be free of steps or other obstacles,[-]

4. Be protected from inclement weather;[-]

5. Have a security penal-type pistol locker in the sally port or vestibule; and[-]

6. Hardware and equipment shall be of approved penal-type.

(d) If the vestibule is used for outside entrance, at least the outer entry door shall be remotely operated.

(2) Exits An opening in the security perimeter shall be secured with a penal device. Fire exits, if possible, shall open into controlled, secured courts or exercise areas.

(3) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative offices and to accommodate the public. Administrative areas shall contain the following additional areas:

(a) A waiting area which shall provide:

1. Space for the general public;

2. Protection from inclement weather; and

3. If the facility is a new jail, ADA compliant toilet facilities for both male and female persons [~~toilet facilities~~] and drinking fountains;

(b) A visiting area, public side which shall:

1. Provide for private communication with prisoners; [~~and~~]

2. Be located in close proximity to the waiting area; and

3. Provide at least one (1) ADA compliant space.

(c) An office area which shall be of sufficient space to house the administrative function of the jail; and

(d) An entrance to the security area which shall:

1. Provide secure access to the security area;

2. Be of penal-type; and

3. Have access controlled from the security area.

(4) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain a booking area. The purpose shall be to provide a private and separate area, properly equipped to carry out admission and release procedures. The equipment shall be penal-type. This area shall be designed for different classes of prisoners. Design features for this area shall include:

(a) Close proximity to a secure area for storage of prisoner personal property;[-]

(b) Close proximity to an area for photography and fingerprinting,[-]

(c) Close proximity to an area for showering, delousing, and strip searching a prisoner which assures privacy for the prisoner;[-]

(d) Close proximity to temporary holding and detoxification cells; and[-]

(e) Located in a manner to be monitored by a control room;[-]

(5) Detoxification area. The purpose shall be to provide an area to separate intoxicated prisoners from the general prisoner population. Design features shall include:

(a) A minimum of fifty (50) square feet per prisoner;[-]

(b) A minimum of eight (8) feet deck height including soffits,[-]

(c) One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each prisoner;[-]

(d) A penal commode, lavatory and a flush floor drain controlled from outside the cell,[-]

(e) A bubble-type drinking fountain;[-]

(f) These fixtures and equipment shall be penal-type;[-]

(g) Each surface inside the area shall be smooth, flush, and free of sharp edges and protrusions;[-]

(h) Each horizontal surface (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain;[-]

(i) The protruding corners (except at deck) shall be covered,[-]

(j) Deck, walls, surfaces of the wall base and floors shall be of approved masonry, concrete or steel construction; and [-]

(k) Each detox cell shall have sufficient penal-type fixtures capable of providing twenty (20) foot-candles of light with a night-light capable of providing five (5) foot-candles of light.

(6) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed eighteen (18) hours [~~four (4) hours~~] in secure holding or eighteen (18) hours [~~eight (8) hours~~] in diversion holding.

(a) Design features for secure holding shall include:

1. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be no less than fifty (50) square feet,[~~.~~]

2. Eight (8) feet deck height,[~~.~~]

3. One (1) penal-type bench per rated capacity;[~~.~~].

4. The equipment shall be penal-type;[~~.~~]

5. One (1) penal-type lavatory and commode,[~~.~~]

6. One (1) penal-type light fixture capable of providing twenty (20) foot-candles of light; and [~~.~~]

7. Decks, walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.

(b) If a diversion holding area is provided, features and requirements shall include:

1. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet;

2. Total rated capacity not to exceed twenty-four (24) persons;

3. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;

4. At least one (1) water fountain shall be located in the area;

5. A phone system shall be available for use by prisoners;

6. Construction shall be fire-rated with penal hardware, windows and door;

7. Furnishings shall not include beds but chairs and tables per rated capacity and shall be fire-rated;

8. An unobstructed view into the area shall be provided,

9. Areas shall have constant in-person surveillance;

10. If prisoners are housed in the area during normal meal times, they shall be fed. Meals shall be either hot or cold; and

11. Policy and procedure shall set forth criteria for placement of prisoners in this area.

(7) Medical exam area [~~room~~]. The purpose of this room shall be to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:

(a) Minimum dimension shall be no less than ten (10) feet; [~~eight (8) feet.~~]

(b) Minimum deck height shall be eight (8) feet including soffits,[~~.~~]

(c) One (1) lavatory or counter sink,[~~.~~]

(d) One (1) work counter;[~~.~~]

(e) Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet,[~~.~~]

(f) One (1) or more medical examination tables,[~~.~~]

(g) Electrical power outlets shall be provided in this room. At least one (1) outlet or power source shall be connected to an emergency power source;

(h) All decks, walls, and floors shall be approved masonry, concrete or steel construction,[~~.~~]

(i) If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment; and [~~.~~]

(j) One (1) bathroom with commercial grade fixtures.

(8) Visiting area, prisoner side. The purpose shall be to provide secure and private visitation for the prisoners. The equipment and furnishings shall be of penal-type and permanently attached. At least one (1) area is to be ADA compliant.

(9) Conference area. The purpose of this area shall be to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. Design features shall include:

(a) Doors, windows, and light fixtures shall be penal-type,[~~.~~]

(b) Walls, floors, and decks shall be of approved masonry, concrete or steel construction; and [~~.~~]

(c) Furnishings shall be noncombustible and nontoxic as approved by the department.

(10) Multipurpose room. The purpose of this area shall be to provide space for assembly of prisoners for specific program activities.

(a) The multipurpose room shall be:

1. In jails with 100 or fewer beds, a minimum of 250 square feet;

2. In jails with 101 to 300 beds, a minimum of 500 square feet or two rooms with a minimum of 250 square feet each; and

3. In jails with 301 or more beds, a minimum of 1000 square feet or four (4) rooms with a minimum of 250 square feet each. [~~This area shall allow at least twenty-five (25) square feet per prisoner in an area with a minimum of 250 square feet.~~]

(b) Design features shall include:

1.[~~(a)~~] Doors, windows, and light fixtures shall be penal-type;[~~.~~]

2. [~~(b)~~] Walls, floor, and deck shall be of approved masonry, concrete or steel construction,[~~.~~]

3. [~~(c)~~] Furnishings shall be noncombustible and nontoxic as approved by the department; and[~~.~~]

4. [~~(d)~~] Deck shall be of approved construction

(11) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per prisoner in an area with a minimum of 385 square feet. At least part of this area is to be covered.

(12) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards for the Retail Food Code, 902 KAR 45:005;[~~.~~]

(b) Commercial-type stoves and refrigeration units,[~~.~~]

(c) Doors and windows shall be penal-type; and[~~.~~]

(d) Walls, floors, and decks shall be approved fire-rated masonry, concrete or steel construction.

(13) Control room. The purpose of this area shall be to control all movement of prisoners within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail. Design features shall include:

(a) Doors and windows shall be of penal-type,[~~.~~]

(b) Walls, floors, and deck shall be approved masonry, concrete or steel construction,[~~.~~]

(c) Audio and video monitors shall be located in this area;[~~.~~]

(d) Gauges, indicators, and alarms shall be located in this area,[~~.~~]

(e) Central control panels shall be located in this area; and[~~.~~]

(f) This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(14) If [~~When~~] jail staff is not within normal hearing distance of prisoners, an audio communication system shall be installed to allow staff to communicate with prisoners.

(15) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in [~~the event of~~] an emergency situation.

(16) Confinement areas. The purpose of these areas shall be to provide suitable living conditions for all types of prisoners lodged in the jail.

(a) Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light,[~~.~~]

2. Providing ventilation to meet air exchange as required in the Kentucky Jail Construction and Renovation Standards; [~~Kentucky Building Code, 815 KAR 7:120.~~]

3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit);[~~.~~]

4. Shall be of approved masonry, concrete or steel construction,[~~.~~]

5. All furnishings and equipment shall be penal-type and permanently attached,[~~.~~]

6. Each confinement area shall have floor drains to service each living area;[~~.~~]

7. Be equipped with an approved securable food pass where appropriate and approved by the Kentucky DOC jail consultants; and[~~.~~]

8. Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal-type.

(b) All cells and housing areas design features shall include:

1. Prisoner living areas shall be equipped with the security

hardware to meet the security requirements of the prisoners housed in the area. Depending on the size of the jail, at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.

2. Depending on the size of the jail, at least one (1) male, one (1) female, and one (1) medical isolation cell shall be provided [~~one (1) or more isolation single man cells shall be provided~~].

3. All cells shall open into a dayroom and a cell shall not be less than seventy (70) square feet. A cell shall not have more than two (2) penal-type bunks. If two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours, except in emergency situations.

4. If the vestibule is used at a cell area, at least the inner door shall be remotely operated. Each cell shall contain:

a. A penal-type commode, lavatory and drinking fountain, penal-type bunks secured to the floor or wall, penal-type table with two (2) seats, and penal-type storage area for personal property; and[.]

b. A penal-type light fixture with controls inaccessible [~~nonaccessible~~] to prisoners unless it has staff override.

5. The jail shall provide living space for low security prisoners including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they shall include:

a. Forty (40) feet per prisoner;[.]

b. One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required,[.]

c. One (1) shower per twenty (20) prisoners;[.]

d. Sufficient tables and benches to handle the number of prisoners housed in the dorm;[.]

e. One (1) penal-type storage area for personal property per prisoner; and[.]

f. One (1) penal-type bunk per prisoner,[.]

6. Each dayroom area shall contain:

a. Thirty-five (35) square feet per prisoner; and[.]

b. One (1) commode per ten (10) [~~eight (8)~~] prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required;[.]

c. One (1) lavatory per ten (10) [~~eight (8)~~] prisoners;[.]

d. One (1) drinking fountain per twenty (20) prisoners,[.]

e. One (1) shower per twenty (20) prisoners; and[.]

f. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per prisoner.

(17) Direct supervision areas. The purpose of a direct supervision area shall be to provide suitable living conditions for prisoners who are located in the jail whose behavior indicates their ability to function in a less secure setting under the direct supervision of jail staff. Jails that elect to use the direct supervision concept shall have a sufficient number of secure cell or dormitories, as approved by the Department of Corrections, in order to separate prisoners who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter. Direct supervision area design features shall include:

(a) Sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light;[.]

(b) Ventilation to meet air exchange as required in the Kentucky Jail Construction and Renovation Standards; [~~Kentucky Building Code, 815 KAR 7:120~~]

(c) Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit;[.]

(d) Approved masonry or concrete construction shall be used;[.]

(e) All furnishings and equipment shall be penal-type or commercial type,[.]

(f) Electrical outlets shall be ground-faulted or have ground-fault circuit breakers;[.]

(g) Dormitories shall not be less than forty (40) square feet person or exceed more than seventy (70) persons;[.]

(h) One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners. One (1) urinal may be substituted for each commode in male areas. The commodes shall not be reduced to less than one-half (1/2) the number required,[.]

(i) One (1) shower per twenty (20) prisoners,[.]

(j) Sufficient tables and chairs to handle the number of prisoners in the dorm,[.]

(k) One (1) storage area for personal property per prisoner;[.]

(l) A phone system shall be available for use by prisoners; and [.]

(m) All other full-service requirements as outlined in 501 KAR Chapter 3 shall apply to direct supervision areas.

Section 7. Incorporation by Reference. (1) "Kentucky Department of Corrections Jail Construction and Renovation Standards," 10-07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, Division of Local Facilities, 2439 Lawrenceburg Road, P.O. 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established standards and procedures to be followed in the design and construction or renovation of full-service jails (jails that house state prisoners).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum construction and renovation requirements for full-service jails as required by KRS 441.055(1)(a)7.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum construction and renovation requirements for full-service jails.

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

(a) How the amendment will change this existing administrative regulation: For new jails and for jails that are being renovated, it

requires that the sally port be located adjacent to the jail intake area for increased security purposes, that public areas of the jail be ADA compliant, that the size of multipurpose rooms be based on the number of beds at the jail, and that part of the outdoor recreation area be covered. It also increases the amount of time that an inmate may be temporarily detained in a holding area to accommodate the jails during periods of overcrowding.

(b) The necessity of the amendment to this administrative regulation: To update the minimum construction and renovation standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It provides updated minimum construction and renovation standards for full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: For news jails or jails that are being renovated, the updated minimum construction standards will have to be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More accessible facilities and facilities that are better suited to house inmates.

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

(a) Initially: No additional cost.

(b)On a continuing basis: No additional cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. These standards apply equally to all new jails and jails that are being renovated.

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. 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? Department of Corrections and county jails that house state inmates.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

3.Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

4.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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

5. 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? Approximately the same as (a).

6.How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

7. How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes security procedures to be followed in full-service jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing the security aspects of the jail's operation.

(2) The department shall provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:

(a) Prisoner rules and administrative regulations;

(b) Staffing;

(c) Searches of prisoner and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner head counts;

(g) Surveillance checks,

(h) Emergency situations;

(i) Jail schedule; and

(j) Administering medication.

Section 2. Prisoner Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner on an irregular schedule, at least every sixty (60) minutes

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of prisoners:

(a) Suicidal;

(b) Assaultive, unless housed in a single cell;

(c) Escape risk, unless housed in a single cell;

(d) Mentally or emotionally disturbed;

(e) In segregation, unless housed in a single cell;

(f) In detox cell;

(g) Juveniles, if housed in the jail; and

(h) Mental inquest detainees.

(3) If available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sally ports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented prisoner

counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to a prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The prisoner rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities.

(2) A weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. Firearms shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances.

(3) If a weapon, ammunition, chemical agent, or related security equipment is not being carried or used, as authorized by the jailer, it shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area located outside the security perimeter of the confinement area.

(6) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of jail personnel.

(7) A prisoner:

(a) May be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of staff; and

(b) Shall not be assigned to a position of authority over another prisoner.

(8) A prisoner shall not be permitted to perform or assist in a security duty.

(9) A jail with a work release or community service program shall establish special control procedures to minimize contact between a prisoner with work release privileges and another prisoner.

(10) A prisoner shall be searched, in accordance with the guidelines established in 501 KAR 3:120, if entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail and shall identify training required before staff are permitted to transport any prisoner.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) A prisoner placed in physical restraints shall be constantly monitored.

(14) The jail shall have key-control procedures which shall include:

(a) A key control center which is secure and inaccessible to an unauthorized person at all times,[;]

(b) An accounting procedure for issuing and returning keys,[;]

(c) A procedure for immediate reporting and repairing a broken or malfunctioning key or lock;[;]

(d) A set of duplicate keys to be maintained in a separate, secure place,[;]

(e) A prisoner shall not be permitted to handle a key used to operate a jail security lock;[;]

(f) A key operating a lock to an outside door or gate shall not be permitted in the confinement area;[;]

(g) An emergency key or any key to a critical security area shall be issued in accordance with written procedures established by the jailer;[;]

(h) Precautions similar to those outlined above shall be taken to insure the security of nonkey operated locking devices including electrical switches or levers; and[;]

(i) A lock to an outside exit shall be keyed differently from an interior lock. The lock to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) A trustee shall not have access to, or control of, a weapon.

(b) An unsupervised trustee shall not be permitted in either a program, support, or housing area with a prisoner of the opposite sex.

(c) A trustee shall not be permitted in either a program, support, or housing area with a juvenile inmate.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

(1) Use of force,[;]

(2) Disciplinary action;[;]

(3) Medical or mental health treatment;[;]

(4) Feeding schedule and menus;[;]

(5) Extraordinary occurrences.

(a) Fire,[;]

(b) Assault;[;]

(c) Suicide or attempted suicide; and[;]

(d) Escape or attempted escape;[;]

(6) Inmate vandalism,[;]

(a) Destruction of jail property; and[;]

(b) Flooding of plumbing fixtures,[;]

(7) Staff roster for each shift, and[;]

(8) Visitor's log.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes security procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum security procedures as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum security procedures to be followed in full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It requires a jail to identify in its written procedures the training required before a staff member may transport a prisoner outside the jail.

(b) The necessity of the amendment to this administrative regulation: To increase the safety and security of inmate transports.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It increases the safety and security of inmate transports by full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 jail will have to specify in its written procedures the training required before a staff member may transport an inmate outside the jail.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Increased safety and security during inmate transports.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Training requirement applies equally to all full-service jails.

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055

4.Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in local full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which shall specify fire prevention administrative regulations and practices to ensure the safety of prisoners, visitors, and staff. The policy shall include.

(a) Provision for a fire emergency planning session for staff at least quarterly;[-]

(b) Written documentation of the fire planning session including evacuation, fire drills, and other procedures covered during the session;[-]

(c) A fire safety inspection by the department at least once a year,[-]

(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by staff monthly,[-]

(e) All county jails that elect to house state prisoners shall be deemed nonsmoking facilities; and [~~Smoking restrictions and regulations~~]

(f) An evacuation plan coordinated with local fire officials. This plan shall be approved by the Department of Corrections.

(2) Each jail shall have written policy and procedures for emergency situations including:

(a) Escape;

(b) Hostage taking;

(c) Riot;

(d) Food poisoning;

(e) Civil disturbance in the community;

(f) Natural disaster;

(g) Suicide; [~~and~~]

(h) Other death and disorder; and

(i) Mass evacuation disaster plan.

Section 2. Physical Plant. (1) Each jail shall comply with the

Kentucky Building Code, incorporated by reference in 815 KAR 7:120. An existing jail for which approval has been granted may continue without change, except if a significant alteration, addition or change of occupancy occurs.

(2) Each exit shall be:

(a) Distinctly and permanently marked;

(b) Visible at all times;

(c) Kept clear; and

(d) Maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In each area where a prisoner may be confined, there shall be an emergency smoke control [~~evacuation~~] system activated by smoke detectors and operated by emergency power. Inspection and testing of the smoke control system shall be conducted by a qualified person at least annually.

(5) Each jail shall have an approved fire alarm and smoke detection system.

(6) Each direct supervision area shall have an approved fire-suppression system.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES,Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

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CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of.

(a) What this administrative regulation does: It establishes safety and emergency procedures for full-service jails (jails that house state inmates).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum safety standards for full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum safety standards for full-service jails as required by KRS 441.055.

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

(a) How the amendment will change this existing administrative regulation: It clarifies documentation requirements for fire planning sessions, requires full-service jails to be non-smoking facilities (outside smoking remains in the discretion of the jailer), requires the jail to have a written mass evacuation disaster plan, and requires annual testing of the jail's smoke control system.

(b) The necessity of the amendment to this administrative regulation: To update the safety and security requirements for full-service jails.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It updates and clarifies the safety and security requirements for full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jails will have to comply with the fire planning session documentation requirement, will have to be non-smoking indoors, will have to have a written mass evacuation disaster plan, and will have to ensure annual testing of the smoke control system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Healthier jail environment with better safety and emergency procedures.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Safety and emergency requirements apply equally to all full-service jails.

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? Department of Corrections and county jails that house state inmates.

3.Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4.Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the

state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY. KRS 441 055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in full-service jails.

Section 1. Procedures (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan that includes but is not limited to:

(a) A cleaning schedule for various locations and items in the jail,[;]

(b) A schedule for inspections by the jailer,[;]

(c) A schedule for trash and garbage removal; and[;]

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh air circulating within prisoner living and activity areas.

(5) The jail shall furnish clean sanitized bedding to prisoners except in holding areas and unless it is determined to be detrimental to a particular prisoner. Issuance of bedding in detoxification is optional. Bedding shall include:

(a) One (1) mattress;[;]

(b) One (1) blanket if [when] conditions require,[;]

(c) Two (2) sheets;[;]

(d) One (1) pillow, if not part of the mattress; and [;]

(e) One (1) pillowcase, if applicable.

(6) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to reissue to next prisoner;[;]

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner; and[;]

(c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to reissue to next prisoner.

(7) Each prisoner shall be issued a clean towel upon admission to a prisoner living area. Towels shall be laundered weekly or more as needed and cleaned prior to reissue to next prisoner.

(8) All floors, toilets, and sinks in the jail shall be washed daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) (a) All prisoners assigned to prisoner living areas shall be issued or permitted to obtain the following hygienic items:

1. Soap;[;]
2. Toothbrush;[;]
3. Toothpaste;[;]
4. Toilet paper; and[;]
5. Female sanitary supplies (if applicable).

(b) Indigent prisoners shall be furnished these items by the jail.

(11) All prisoners shall be permitted to shave a minimum of three (3) times per week. Communal razors shall not be used.

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

(13) All prisoners shall be provided shower facilities within twenty-four (24) hours of admission Prisoners shall be permitted to shower daily

(14) All prisoners in the jail shall be provided with hot and cold running water in showers and lavatories.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes procedures for proper sanitation and hygiene in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum sanitation and hygiene requirements for full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. It establishes minimum sanitation and hygiene requirements for full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It specifies that sheets, pillowcases, mattress covers, mattresses, pillows, and towels must be cleaned before being reissued to another prisoner.

(b) The necessity of the amendment to this administrative regulation To ensure appropriate sanitation and hygiene in full-

service jails.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100 .

(d) How the amendment will assist in the effective administration of the statutes: It ensures appropriate sanitation and hygiene in full-service jails

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jails will have to clean sheets, pillowcases, mattress covers, mattresses, pillows, and towels before being reissued to another inmate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More sanitary conditions for inmates at full-service jails.

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

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased

(9) TIERING: Is tiering applied? No. Sanitation and hygiene requirements apply equally to all full-service jails.

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? Department of Corrections and county jails that house state prisoners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4.Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a)

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-).

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:090. Medical services.

RELATES TO: KRS 441.045, 441.047, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails which elect to house state prisoners. This administrative regulation sets forth procedures for the proper delivery of medical services in full-service jails.

Section 1. Medical [~~Procedure~~] Services. (1) The jail's medical services shall be provided by contracting with a health care provider licensed in Kentucky.

(2) The medical staff shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(3) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(5) Prisoners shall not perform any medical functions within the jail.

(6) Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(7) All medical procedures shall be performed according to orders issued by the responsible medical authority. All medical procedures that require hospital care shall use the Kentucky Correctional Health Care Services Network, or other contracted health care provider.

(8) Medical screening shall be performed by the receiving officer on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to.

(a) Current illnesses and health problems;[-]

(b) Medications taken and special health requirements;[-]

(c) Screening of other health problems designated by the medical authority;[-]

(d) Behavioral observation, state of consciousness and mental status,[-]

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;[-]

(f) Condition of skin and body orifices, including rashes and infestations; and[-]

(g) Disposition and referral of prisoners to qualified medical

personnel on an emergency basis.

(9) Sick call conducted by the medical authority shall be available to each prisoner as follows:

(a) Facilities with fewer than 100 prisoners shall hold sick call two (2) days [~~one (1) day~~] per week, at a minimum;[~~.~~]

(b) Facilities with 100 to 300 prisoners shall hold sick call three (3) days per week, at a minimum; and[~~.~~]

(c) Facilities with more than 300 prisoners shall hold sick call five (5) days [~~four (4) days~~] per week, at a minimum.

(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.

(11) Deputy jailers and correctional officers [~~At least one (1) jail staff~~] member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation).

(12) Emergency medical, vision, and dental care shall be available to all prisoners commensurate with the level of care available to the community.

(13) Medical research shall not be permitted on any prisoner in the jail.

(14) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record shall be separate from custody and other administrative records of the jail.

(15) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for prisoner care.

(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all prisoners who die while in the custody of the jailer.

(17) The jailer shall have written delousing procedures.

(18) All jail staff or contract staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(19) The jail shall have first aid kits available at all times.

(20) A prisoner who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility that can provide the treatment or may be moved to a hospital.

(21) If emergency care is needed, it shall be provided.

Section 2. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill,

(d)1. Is severely and persistently mentally ill, and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Commissioner in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and if felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not,

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(k) Whether the care is necessary or not;

(l) Any conflict reports; and

(m) Relevant attachments such as

1. Copy of prisoner's insurance card,

2. Doctor's report,

3. Incident report,

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication

(3) If a prisoner is approved for transfer to the department as a catastrophic medical prisoner, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information,

(d) Incident reports;

(e) Current citation;

(f) Classification information,

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt

(4) If a prisoner is approved for transfer to the department as a catastrophic medical prisoner, the prisoner shall be transported by the department

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes minimum requirements for the provision of medical services in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055 and 441.560.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum health standards for full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum health standards for full-service jails

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

(a) How the amendment will change this existing administrative regulation: It requires the jails to hold more sick calls per week, requires the deputy jailer and jail staff to be trained in CPR, and establishes procedures to implement House Bill 191, regarding catastrophic medical transfers of certain county prisoners to the department. The amendment adds procedures so that prisoners with significant medical needs can be transferred to the department for necessary medical treatment and care.

(b) The necessity of the amendment to this administrative regulation: To improve the provision of medical services in full-service jails and to implement HB 191 regarding catastrophic medical transfers. House Bill 191 from the 2007 Regular Session

of the General Assembly authorizes local jailers to request medical transfers to the Department for prisoners with significant medical needs. HB 191 further requires the Department to promulgate administrative regulations establishing transfer procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standards Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It provides improved minimum standards for the provision of medical services in full-service jails and establishes the procedures for catastrophic medical transfers to the department. It will enable local jailers to transfer to the Department prisoners with specialized or ongoing medical needs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails-of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jailers will have to hold sick call an extra day per week, and deputy jailers and staff will have to be trained in CPR. Also, Jailers will need to request a medical transfer in writing and provide specified information about the prisoner. If a transfer is approved, the Department will have to transport the prisoner and pay for necessary medical care.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal costs to the local jails, estimated cost to the department - $900,000 based on estimated 80 transferred inmates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prisoners will receive necessary medical care in an appropriate setting; Local jails will no longer be burdened with the responsibility of obtaining and paying for the medical care for these prisoners.

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

(a) Initially: Approximately $900,00.

(b) On a continuing basis: Approximately the same.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Set out by HB 191, Section 5 Initially general funds, and then if insufficient, up to $1,5000,000 may be requested from the general fund surplus or budget reserve trust fund account.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING. Is tiering applied? No. The minimum standards for health services and procedures for requesting medical transfers apply equally to all full-service jails

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? Department of Corrections and county jails that house state inmates.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055, 441.560.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a)

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them. Additionally, the department expects the HB 191 medical transfers to cost approximately $900,000 based on an estimated number of 80 transferred inmates.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-).

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:100. Food services.

RELATES TO: KRS 196.035,197.020, 217.280-217.390, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to [-] promulgate administrative regulations establishing minimum health standards for jails which elect to [-] house state prisoners and for jails which do not elect to [-] hold state prisoners. This administrative regulation sets forth procedures for proper food services in both types of jails

Section 1. Procedures. (1) The jail shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005.

(2) The jailer shall provide adult prisoners with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile prisoners shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer shall provide for religious diets after review and approval of religious authority

(5) The jailer shall provide for medical diets if prescribed by a medical authority

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) A staff member shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of a staff member.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer or his designee shall inspect the food service area daily.

(13) Canteen food items purchased by prisoners may be stored or prepared in amounts that do not pose a threat to the health or security of the institution.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a)

JOHN D. REES Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 200 at 10 a.m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes procedures for proper food services in full-service jails and life safety jails (jails which do not elect to house state prisoners).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum standards for food services in local jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for food services in local jails.

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

(a) How the amendment will change this existing administrative regulation: It specifies that a local jailer shall provide for religious diets after review and approval of religious authority.

(b) The necessity of the amendment to this administrative regulation: To clarify when a local jailer has to provide an inmate with a religious diet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It clarifies when a jailer has to provide an inmate with a religious diet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 8 life-safety jails and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, approximately 7,729 state inmates that are in the full-service jails, and approximately 197 inmates in life safety jails.

(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: A jailer will have to provide for religious diets after review and approval of religious authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inmates will receive religious diets if appropriate.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Food services requirements apply equally to all local jails.

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? Department of Corrections and local jails.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:130. Prisoner programs; services.

RELATES TO KRS 439.179, 441.055, 441.125, 532.100
STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 532.100(4)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes procedures for prisoner programs and services in those jails.

Section 1. Definitions. (1) "Chaplain" means a volunteer authorized to provide religious counsel, instruction, and advice to inmates and to provide a system of services or religious volunteers, ecclesiastical visitors, and guests for inmates.

(2) "Inmate Religious Beliefs and Practices Manual" means the U.S. Department of Justice, Federal Bureau of Prisons technical reference manual, "Inmate Religious Beliefs and Practices," dated March 27, 2002, incorporated by reference in 501 KAR 6:020.

(3) "Religious diet" means any diet deemed essential by the Inmate Religious Beliefs and Practices manual.

(4) "Religious items" means items associated with a particular religious faith which may include religious medallions, kufi cap, prayer rugs, crucifix, yarmulke, prayer beads, rosary, sacred eagle feathers, medicine bag, or Star of David.

(5) "Religious practice" means outwardly observable manifestations of religious beliefs including:

(a) Participating in congregations and meetings;

(b) Engaging in rituals and ceremonies;

(c) Praying, chanting, and singing;

(d) Wearing special items of clothing, jewelry, hairstyles, or beards;

(e) Adhering to special diets, and

(f) Participating in special activities characteristic of a particular religion or adherents of a particular religion.

Section 2.[1.] Work Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedure shall provide that unsentenced prisoners shall not be required to work except to do personal housekeeping.

Section 3.[2]. Education Programs. (1) The jail shall develop a policy and procedure that encourages the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of the programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

Section 4.[3.] Library Services. If resources are available in the community, library services may be made available to all prisoners.

Section 5.[4.] Religious Programs. (1) Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the jail.

(2) The jailer or designee shall ensure that an inmate has the opportunity to participate in practices of his religious faith in accordance with the Inmate Religious Beliefs and Practices Manual. These practices shall:

(a) Include religious publications, religious symbols, congregational religious services, individual and group counseling, religious study classes, and religious diets; and

(b) Be limited only by documentation showing a threat to the safety of persons involved in an activity or that the activity itself disrupts order in the institution.

(3) Each jail shall provide a chaplain or staff who plans, directs, and coordinates all aspects of the religious program including approval and training of both lay and clergy volunteers from faiths represented by the inmate population.

(4) If the chaplaincy staff or volunteers do not include a religious leader of an inmate's faith, the chaplain shall assist the inmate in contacting a person who has the appropriate credentials from the faith judicatory. That person may minister to the inmate under the supervision of the chaplain.

(5) The chaplain, in cooperation with the jailer or designee, shall develop and maintain communications with faith communities and approve donations of equipment or materials for use in religious programs.

(6) The jailer shall have final authority over publications, services, volunteers, and other operations of religious services.

(7) Jailer or designee responsibilities. The jailer or designee shall:

(a) Assure equal status and protection for all approved religions;

(b) Coordinate scheduling of religious programs;

(c) Have access to approved areas of the jail;

(d) Develop and maintain close relationships with community religious resources, and

(e) Coordinate and supervise all religious volunteers.

(8) Religious Programming.

(a) The provisions of Federal Bureau of Prisons Technical Reference Manual notwithstanding, the following religious practices and activities shall not be authorized:

1. Animal sacrifice;

2. Language or behavior that may reasonably be construed as a threat to safety, security, or the orderly running of the institution;

3. Nudity;

4. Self mutilation;

5. Use, display, or possession of weapons or what appear to be weapons;

6. Paramilitary exercises;

7. Self-defense training;

8. Sexual acts;

9. Profanity;

10. Consumption of alcohol (except consumption by the celebrating ordained minister as provided in the Inmate Religious Beliefs and Practices Manual);

11. Ingestion of illegal substances;

12. Proselytizing;

13. Inscription;

14. Discouragement of other religions; or

15. Use of candles or open flames inside any building.

(b) The jail shall provide space and equipment adequate for the conduct and administration of each religious program.

1. In an institution that uses a common worship area, adequate space shall be provided for religious emblems and other items used during worship.

2. The institution shall maintain a basic library of religious reading materials, which shall include required literature of faiths represented by the inmate population.

(c) Services and ceremonies.

1. Each jail shall allow religious services pursuant to this policy.

2. A specific religious service and ceremony may be provided based upon the inmate's stated religious preference.

(d) Religious objects and literature. All jails shall permit an inmate to possess items essential to the practice of his particular religious faith if the items are not a threat to institutional security.

(e) Religious diets. The jail shall, to the extent it is feasible and within appropriate jail resources, provide each inmate with the opportunity to satisfy the minimum dietary requirements deemed essential by Inmate Religious Beliefs and Practices Manual. Religious diets shall be included in the Department of Corrections' master menu. Any request for a religious diet not included in the master menu shall be reviewed by the jailer or designee.

(f) New religious components. If a request is made for a religious service not represented at the jail, the jailer or designee shall consult the Inmate Religious Beliefs and Practices Manual.

1. If the request is in compliance with the Inmate Religious Beliefs and Practices Manual, it shall be implemented.

2. If a request for a religion or religious practice is not represented in the Inmate Religious Beliefs and Practices Manual, then the request shall be denied.

3. Documentation of the request and action taken shall be forwarded to the jailer or designee.

(g) Inmate responsibilities.

1. Upon entry into the correctional system, an inmate's religious preference shall be recorded on the inmate I.D. form.

2. After three (3) months, an inmate may change his religious preference by contacting the jailer or designee.

3. It shall be the inmate's responsibility to seek a job or program assignment that does not conflict with his religious beliefs and practices.

4. An inmate request for a special service or ceremony shall be made at least forty-five (45) days prior to the requested date. This request shall be made in writing to the chaplain with appropriate justification. In order to ensure consistency of religious programming, any special request shall be referred through the institutional administration to the Director of Operations/Programs for appropriate action.

(9) Staff Meetings and Training. The jail's chaplains or religious staff shall meet on a quarterly basis to address issues pertaining to religious services. These meetings shall be coordinated through the office of the Director of Operations/Programs.

Section 6 [5.] Recreation Programs. (1) Written policy and procedure shall provide all prisoners with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week if weather permits. Prisoners who pose a threat to the safety and security of the jail shall be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners to participate in board games, arts and crafts, radio and television or other activities designed to relieve idleness and boredom.

Section 7 [6.] Programs for State Prisoners. (1) On-the-job training work programs. State prisoners may be provided the opportunity to participate in on-the-job training work programs in accordance with KRS 441.125.

(2) Substance abuse programs. State prisoners shall be provided the opportunity to participate in self-help substance abuse programs offered within the jail. State prisoners who apply for treatment and are accepted by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if space is available or may be housed in jails offering the program, if space if available.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes procedures for prisoner programs and services in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes procedures for prisoner programs and services in full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: it establishes procedures for prisoner programs and services in full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It adds procedures for religious programming in accordance with federal standards. These are the same procedures established in state institutions by CPP 23.1, incorporated by reference in 501 KAR 6.020.

(b) The necessity of the amendment to this administrative regulation: To clarify what types of religious programming are required or authorized in full-service jails in accordance with federal standards, other state regulations, and constitutional principles.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It clarifies what types of religious programming are required or authorized in full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jailers will have to offer or accommodate religious programming in accordance with the new standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistent religious programming in local, state, and federal institutions in accordance with constitutional principles.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted

funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. These standards for prisoner programming and services apply equally to all full-service jails.

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? Department of Corrections and county jails.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055

4.Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-).

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.047, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes procedures to ensure the protection of rights of prisoners in those full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner rights which shall address:

(a) Access to court;[,]

(b) Access to attorney;[,]

(c) Mail;[,]

(d) Telephone;[,]

(e) Grievance procedure;[,]

(f) Search and seizure,[,]

(g) Disciplinary procedure,[,]

(h) Racial segregation;[,]

(i) Medical care,[,]

(j) Mental health care, if available; and[,]

(k) Religion.

(2) The statement of prisoner rights shall be posted in a conspicuous place in the booking area and living areas of the jail, and a copy shall be made available to the prisoner as soon after assignment as possible. Upon admission, a prisoner shall sign that he has received a written copy of the prisoner's rights.

(3) The jailer shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative.

(5) The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend,[,]

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners;[,]

(c) A visit shall not be less than fifteen (15) minutes;[,]

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and[,]

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) [(4)] of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;

2. Has a past history of disruptive conduct at the jail,

3. Is under the influence of alcohol or drugs,

4. Refuses to submit to a search; or

5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) [6] of this section, the jail staff may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of telephone

calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time, and party contacted.

(3) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) If calls are monitored, the prisoner shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institution order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if the security and order of the jail will [~~shall~~] not be jeopardized.

Section 6. Grievance Procedure The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) Response, within ten (10) days, to all grievance complaints, unless waived by the prisoner;

(2) Equal access for each prisoner;

(3) Guarantee against reprisal; and

(4) Resolving legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

(1) Jailers shall be required to report suicides or attempted suicides that constitute a serious health situation to the Kentucky Department of Corrections within twenty-four (24) hours

(2) All jail personnel shall receive a minimum of four (4) hours of mental health training annually [~~within their first year of service~~].

(3) Each jail shall have a written policy and procedure outlining staff response to detainees who are at risk for suicide or have attempted or completed suicide.

(4) The Kentucky Department of Corrections and Kentucky Jailers Association shall coordinate the development of and revisions to mental health training curriculum.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner,

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to ensure protection of prisoner rights in full-service jails

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum standards for prisoner rights in full-service jails, as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. It establishes minimum standards for prisoner rights in full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It requires jailers to report suicides or attempted suicides to the department within 24 hours, and requires all jail personnel to receive at least four hours of mental health training annually.

(b) The necessity of the amendment to this administrative regulation: To ensure that the department is informed of any suicides or attempted suicides promptly and that jail personnel receive current and appropriate mental health training on an annual basis.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It improves reporting and training regarding mental health issues in full-service jails

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This affects approximately 73 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 7,729 state inmates that are in the jails - of those, approximately 4,878 are Class C and D felons with the remainder being controlled intake inmates and probation and parole violation inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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 jailers will have to report suicides/attempted suicides to the department within 24 hours; all jail personnel will have to receive four hours of mental health training annually.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Better reporting to the department, personnel better equipped to address prisoner mental health issues

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? No. Minimum standards regarding prisoner rights apply equally to all full-service jails.

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? Dept. of Corrections and county jails that house state inmates.

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:040. Personnel.

RELATES TO. KRS 441.055

STATUTORY AUTHORITY: KRS 196 035, 197.020, 441.045, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441 055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each center shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) If a female prisoner is housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. Security employees shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage that is at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

Section 4. Training. Jail personnel whose jobs require prisoner supervision shall successfully complete a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or basis, or by computer-based training, or by another agency after first being reviewed and approved by the Department of Corrections [~~local basis or approved by the department if delivered by another agency~~].

Section 5. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every staff position.

Section 6. Physical Fitness The jailer shall ensure that a level of physical fitness is maintained that will allow each employee to satisfactorily perform his duties.

Section 7. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or a favor with a prisoner, his family, or friend;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;

4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;

5. Discriminate against any prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner to physical or mental abuse;

8. Intentionally demean or humiliate a prisoner;

9 Bring a weapon or an item declared as contraband into the center without proper authorization;

10. Engage in critical discussion of staff or any prisoner in the presence of a prisoner,

11. Divulge confidential information without proper authorization;

12. Withhold information which, in so doing, threatens the security of the center, its staff, visitors, or the community;

13 Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with a prisoner; [~~or~~]

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;

16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail that the employee is employed by; or

17. Enter into an intimate, personal relationship with a former prisoner of jail within six (6) month of that prisoner's release

(b) An employee shall.

1. Comply with established rules, administrative regulations, and lawful orders from superiors;

2. Treat prisoners in a fair, impartial manner; and

3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements to KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes personnel procedures to be followed in restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes personnel procedures to be followed in restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: It authorizes jail personnel to utilize computer-based training. It also prohibits employees from entering into intimate, personal relationships with prisoners at the jail, or within six months of a prisoner's release.

(b) The necessity of the amendment to this administrative regulation: To update training standards and the code of ethics for jail employees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum personnel standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 66 restricted custody centers (20 are in separate buildings apart from the jails and 46 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 4,878 Class C and D inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jail personnel may be able to receive computer-based training Employees will not be able to enter into intimate, personal relationships with current prisoners at the jail or prisoners that have been released within six months.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jail staff will have additional training opportunities. Amending the code of ethics will enhance the professionalism of the jail staff and increase security at the restricted custody centers.

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

(a) Initially: No costs.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Personnel standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Karen S. Howard (502) 564-8215

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? Department of Corrections and restricted custody centers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441 055.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. Revenue generated for local government is included in the total $81 million that the state pays local jails for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as in (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:080. Sanitation; hygiene.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes procedures for proper sanitation and hygiene in restricted custody centers.

Section 1. Procedures. (1) The jailer shall provide for:

(a) The control of vermin and pests; and

(b) Both solid and liquid waste disposal.

(2) The jailer shall have a written preventative maintenance plan which includes schedules for:

(a) Cleaning various specified locations and items in the center;

(b) Inspections by the jailer;

(c) Trash and garbage removal; and

(d) Periodic inspection and maintenance of specified mechanical equipment.

(3) The center shall have fresh, purified air circulating within each prisoner living and activity area.

(4) The center shall furnish clean, sanitized bedding to prisoners, including:

(a) One (1) penal mattress;

(b) One (1) blanket, if [when] conditions require;

(c) Two (2) sheets;

(d) One (1) pillow, if not part of the mattress; and

(e) One (1) pillowcase, if applicable.

(5) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week or upon reissue to another inmate;

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner; and

(c) Mattresses and pillows shall be cleaned quarterly or upon reissue to another inmate.

(6) Each prisoner shall be issued a clean towel. Towels shall be laundered weekly, or more as needed, or upon reissue to another inmate.

(7) Provisions shall be made for laundering prisoner clothing at least once a week.

(8) Floors, toilets, and sinks shall be washed daily or more often as necessary.

(9) Showers shall be cleaned on at least a weekly basis.

(10)(a) Prisoners shall be issued or permitted to obtain the following hygienic items:

1. Soap;
2. Toothbrush;
3. Toothpaste;
4. Toilet paper; and
5. Female sanitary supplies, if applicable.

(b) An indigent prisoner shall be furnished these items by the center.

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes procedures for proper sanitation and hygiene in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum sanitation and hygiene requirements for restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum sanitation and hygiene requirements for restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: It specifies that sheets, pillowcases, mattress covers, mattresses, pillows, and towels must be cleaned before being reissued to another inmate.

(b) The necessity of the amendment to this administrative regulation: To ensure appropriate sanitation and hygiene in restricted custody centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It ensures appropriate sanitation and hygiene in restricted custody centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 66 restricted custody centers and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 4,878 Class C and D inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including.

(a) 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: Restricted custody centers will have to clean sheets, pillowcases, mattress covers, mattresses, pillows, and towels before being reissued to another inmate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More sanitary conditions for inmates in restricted custody centers.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Sanitation and hygiene requirements apply equally to all restricted custody centers.

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? Department of Corrections and restricted custody centers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. Revenue generated for local government is included in the total $81 million that the state pays local jails for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as in (a)

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:090. Medical services.

RELATES TO: KRS 72.025, 441.045, 441.055, 441.560

STATUTORY AUTHORITY: KRS 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes procedures to provide proper medical services in restricted custody centers.

Section 1. Medical [~~Procedure~~] Services. (1) The center's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the center's security requirements.

(3) All health care staff working in the center shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of the licenses and certificates for health care staff employed by the center shall be maintained on file within the center.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the center. This log shall be kept current to the preceding hour.

(5) Residents shall not perform any medical functions within the center.

(6) Residents shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the center.

(7) All medical procedures shall be performed according to orders issued by the responsible medical authority.

(8) Medical screening information shall be transferred to the center from the jail on each resident. Staff shall insure that the information is current when the resident is transferred [~~at the time of transfer~~]. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of residents to qualified medical personnel on an emergency basis.

(9) Medical, dental and psychological care for residents shall be provided in accordance with KRS Chapter 441 [~~441.045~~].

(10) At least one (1) center staff member per shift shall be trained in first aid procedures including CPR.

(11) Medical research shall not be permitted on any resident in the center.

(12) Access to the resident's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record shall be separate from custody and other administrative records of the center.

(13) In accordance with KRS 72.025, a postmortem examination shall be conducted on all residents who die while in the custody of the jailer.

(14) All center staff, or contract staff who administers medications to residents shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(15) The center shall have first aid kits available at all times.

(16) If a urine surveillance program is in effect there shall be written procedures for carrying out the program

Section 2. Medical Transfers pursuant to KRS 441.560 (1) A jailer may request that a resident be transferred to the department for necessary medical treatment and care if the resident:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d)1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the commissioner in writing and shall contain the following information:

(a) Resident's name;

(b) Resident's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and if felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the resident has insurance or not;

(h) Whether the resident is indigent or not;

(i) Justification for medical transfer;

(k) Whether the care is necessary or not;

(l) Any conflict reports; and
(m) Relevant attachments such as:
1. Copy of resident's insurance card;
2. Doctor's report;
3. Incident report;
4. Citation;
5. Booking information;
6. Preexisting medical records; or
7. Current medication

(3) If a resident is approved for transfer to the department as a catastrophic medical prisoner, the jail shall provide the following, unless already provided with the transfer request:
(a) All medical information;
(b) Current medication in proper container;
(c) Booking information;
(d) Incident reports;
(e) Current citation;
(f) Classification information;
(g) Conflict reports;
(h) Any additional pertinent information; and
(i) Custody receipt.

(4) If a resident is approved for transfer to the department as a catastrophic medical prisoner, the resident shall be transported by the department.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY. October 12, 2007
FILED WITH LRC: October 15, 2007 at 10 a.m.

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CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum health care standards for restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055 and 441.560.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment adopts the Jail Standards Commission recommendations as required by KRS 532.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes minimum health care standards for restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds procedures so that restricted custody residents with significant medical needs can be transferred to the department for necessary medical treatment and care.

(b) The necessity of the amendment to this administrative regulation: House Bill 191 from the 2007 Regular Session of the General Assembly authorizes local jailers to request medical transfers to the Department for prisoners with significant medical needs. HB 191 further requires the Department to promulgate administrative regulations establishing transfer procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the required procedures for a jailer to request a medical transfer.

(d) How the amendment will assist in the effective administration of the statutes: It will enable local jailers to transfer to the Department restricted custody residents with specialized or ongoing medical needs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 66 restricted custody centers and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 4,878 Class C and D inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) 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: Jailers will need to request a medical transfer in writing and provide specified information about the prisoner. If a transfer is approved, the Department will have to transport the prisoner and pay for necessary medical care.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal to no cost to the local jailers; Estimated cost to the Department - $900,000 based on estimated 80 transferred inmates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prisoners will receive necessary medical care in an appropriate setting; Local jails will no longer be burdened with the responsibility of obtaining and paying for the medical care for these prisoners.

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

(a) Initially: Approximately $900,000.

(b) On a continuing basis: same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Set out by HB 191, Section 5 Initially general funds, and then if insufficient, up to $1,5000,000 may be requested from the general fund surplus or budget reserve trust fund account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Funding for this program is set by statute-see (6)

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No. The procedures for requesting medical transfers apply equally to all local jails.

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 jails with Restricted Custody Centers; Department of Corrections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.560.

4. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state. For the jails, for fiscal year 2008, the department will pay them approximately $81 million for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as (a).

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them. Additionally, the department expects the HB 191 medical transfers to cost approximately $900,000 based on an estimated number of 80 transferred inmates.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:100. Food services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: 196.035, 197.020[~~13A.350~~], 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth procedures for the delivery of proper food services in restricted custody centers.

Section 1. Procedures. (1) The center shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005 [~~the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.019 through KRS 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 C.F.R. Part 1910)~~].

(2) The jailer shall provide adult residents with a nutritionally adequate diet.

(3) The jailer shall provide for religious diets after review and approval of a religious authority

(4) The jailer shall provide for medical diets if [~~where~~] prescribed by a medical authority.

(5) The center shall maintain accurate records of all meals served.

(6) Food shall not be used for disciplinary [~~or reward~~] purposes.

(7) A nutritionist or dietician shall approve the nutritional value of the center menu on an annual basis.

(8) A staff member shall directly supervise all food prepared within the center.

(9) All food shall be served under the direct supervision of a staff member.

(10) The center shall have sufficient cold and dry food storage facilities if food is prepared in the center.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a)

JOHN D. REES Chairman, Commissioner,

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for proper food services in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum standards for food services in restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for food services in restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: It specifies that a local jailer shall provide for religious diets after review and approval of religious authority.

(b) The necessity of the amendment to this administrative regulation: To clarify when a local jailer has to provide an inmate with a religious diet.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment adopts the Jail Standards Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It clarifies when a jailer has to provide an inmate with a religious diet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 66 restricted custody centers and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 4,878 Class C and D inmates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A jailer will have to provide for religious diets, after review and approval of religious authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inmates will receive religious diets if appropriate.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Food service requirements apply equally to all restricted custody centers.

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? Department of Corrections and restricted custody centers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441 055.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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 for the state Revenue generated for local government is included in the total $81 million that the state pays local jails for the housing, transportation, and medical care of the state inmates.

(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? Approximately the same as in (a)

(c) How much will it cost to administer this program for the first year? For fiscal year 2008, the department will pay the local jails approximately $81 million for the housing, transportation, and medical care of the state inmates. Plus, the department will have approximately $974,800 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 198B.650-198B 689, 217 280-217.390, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196 035, 197 020, 441.055, 441 560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails which do not elect to house state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that do not house state prisoners.

Section 1. Definitions. (1) "Life Safety Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 441 005, operated by and under the supervision of any county, regional jail authority, city or urban county government that does not house state prisoners as defined by KRS 532.100.

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners in the jail's custody.

Section 2. Staffing. (1) Each jail shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) Each jail shall be required to provide the Department of Corrections with a weekly population update.

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications. Security employees shall be at least twenty-one (21) years of age

(5) Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

(6) Males and females shall be housed separately.

Section 3. Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3 050.

(2) All furnishings in the jail shall be noncombustible and nontoxic as approved by the Department of Corrections.

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the State Food Service Code, 902 KAR 45.005.[-]

(b) Commercial type stoves and refrigeration units; and[-]

(c) Walls, floors, and decks shall be approved fire rated masonry, concrete, or steel construction

(4) Gauges, indicators, and alarms shall be located in an area monitored by staff.

(5) The jail shall provide ventilation to meet air exchange as required in the state health codes, KRS 198B 650 to 198B.689, 803 KAR 2 317, and 902 KAR 45.005.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which shall be secure.

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate, secure place.

(10) Each jail shall comply with the Kentucky Building Code, 815 KAR 7.120.

Section 4 Fire Safety. (1) Each jail shall have a written policy and procedure which specifies fire prevention regulations and practices to ensure the safety of prisoners, visitors, and staff. These shall include but not be limited to:

(a) Provision for fire emergency planning sessions for staff at least quarterly.[-]

(b) Written documentation of fire planning sessions and a written copy of the material taught;[-]

(c) A fire safety inspection by the Department of Corrections at least once a year;[-]

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly;[.]

(e) Smoking restrictions and regulations; and[-]

(f) Written evacuation plan coordinated with local fire officials.

(2) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In all areas where a prisoner may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation, Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running water in showers and lavatories.

Section 6. Medical Services. (1) Deputy jailers and correctional officers shall have current training in standard first aid and C.P.R., as offered by the American Red Cross and the Department of Corrections, Division of Corrections Training.

(2) The jail shall have first aid kits available at all times.

(3) A health status (including current medications, known allergies, and diet or other special medical needs) shall be completed on each prisoner during admission.

(4) Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.

Section 7. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d)1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the commissioner in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's social security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and if felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not;

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(k) Whether the care is necessary or not;

(l) Any conflict reports; and

(m) Relevant attachments such as:

1. Copy of prisoner's insurance card;

2. Doctor's report;

3. Incident report;

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication.

(3) If a prisoner is approved for transfer to the department as a catastrophic medical prisoner, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information;

(d) Incident reports;

(e) Current citation;

(f) Classification information;

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department as a catastrophic medical prisoner, the prisoner shall be transported by the department.

Section 8. [7.] Food Services. (1) The jail shall comply with KRS 217.280 to 217.390, 803 KAR 2:317, and 902 KAR 45.005.

(2) The jail shall provide prisoners with a diet containing 2400 calories daily and jail menus shall be approved annually by a nutritionist or dietician.

(3) Prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer shall provide for medical diets if prescribed by a medical authority.

(5) The jailer shall provide for religious diets after review and approval of religious authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary [~~or reward~~] purposes.

(8) A staff member shall directly supervise all food prepared within the jail.

(9) All food shall be served under the direct supervision of a staff member.

(10) The jail shall have sufficient cold and dry food storage facilities.

(11) The jailer or his designee shall inspect the food service area daily.

(12) Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the institution.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 1 p.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation establishes procedures for the protection of basic health and life safety in jails that do not house state prisoners (life safety jails).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes procedures for the protection of basic health and life safety in jails that do not house state prisoners as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes procedures for the protection of basic health and life safety in jails that do not house state prisoners.

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

(a) How the amendment will change this existing administrative regulation: It requires the jail to keep written documentation of the material taught at fire planning sessions. It requires jailers to provide for religious diets after review and approval of religious authority. It also establishes procedures to implement HB 191, regarding catastrophic medical transfers of certain county prisoners to the department. The amendment adds procedures so that prisoners with significant medical needs can be transferred to the department for necessary medical treatment and care.

(b) The necessity of the amendment to this administrative regulation: To increase safety of the jails, to provide for religious diets if appropriate, and to implement HB 191 regarding catastrophic medical transfers. House Bill 191 from the 2007 Regular Session of the General Assembly authorizes local jailers to request medical transfers to the department for prisoners with significant medical needs. HB 191 further requires the department to promulgate administrative regulations establishing transfer procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Commission recommendations as required by KRS 532.100.

(d) How the amendment will assist in the effective administration of the statutes: It improves safety and protection of basic rights in life safety jails. It also establishes the procedures for catastrophic medical transfers to the department so that local jailers can transfer prisoners with specialized or ongoing medical needs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 8 life safety jails and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 197 inmates in the life safety jails.

(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: Jails will have to document the material taught at the fire planning sessions, jailers will have to provide religious diets if appropriate, and jailers will have to request a medical transfer in writing and provide specified information about the prisoner. If a transfer is approved, the department will have to transport the prisoner and pay for necessary medical care.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost to the local jails, estimated cost to the department - $900,000 based on estimated 80 transferred inmates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Better safety and increased protection for basic rights at life safety jails. Also, prisoners will receive necessary medical care in an appropriate setting. Local jails will no longer be burdened with the responsibility of obtaining and paying for the medical care of these prisoners.

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

(a) Initially: Approximately $900,000.

(b) On a continuing basis: Approximately the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Set out by HB 191, Section 5 Initially general funds, and then if insufficient, up to $1,5000,000 may be requested from the general fund surplus or budget reserve trust fund account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Funding for this program is set by statute see (6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No. The procedures for requesting medical transfers apply equally to all life safety jails.

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? Department of Corrections and life safety jails.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055, 441.560.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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? Approximately $900,000 based on estimate 80 transferred prisoners.

(d) How much will it cost to administer this program for subsequent years? Approximately same as (c).

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amendment)

502 KAR 13:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably-retired [~~Kentucky~~] elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired [~~Kentucky~~] elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements [~~requirement~~] and procedures for certification.

Section 1. Definitions.

(1) "Applicant" means an honorably retired peace officer [~~office~~] who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(2) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for Li-

cense."

(3) "Honorably retired" means an [~~a Kentucky~~] elected or appointed peace officer who:

(a) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(b) Before retirement, was authorized by law to engage in or supervise [~~as~~] the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(c)1. Before retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more; or

2. Retired from service with an agency, after completing any applicable probationary period of service, due to a service-connected disability, as determined by the agency;

(d) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(e) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer [~~office~~], Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms, as set out in KRS 15.383;

(f) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance, and

(g) Is not prohibited by Federal law from receiving a firearm.

(4) [~~(3)~~] "Peace Officer" is defined by KRS 446.010(25) [~~446.010(24)~~] and 61.365.

Section 2. An application form shall be identified by a unique number that shall be:

(1) Expressed on the application form as a bar code that contains the application number;

(2) Used as the identifying number for the applicant; and

(3) Machine and human readable.

Section 3. Application forms shall:

(1) Not be stored in an area accessible to the public; and

(2) Not be removed from the office of the sheriff except as permitted by Section 6(4) of this administrative regulation.

Section 4. A sheriff shall issue an application form to an applicant if:

(1) An applicant meets the requirements established by KRS 237.138 to 237.142;

(2) The sheriff has verified that an applicant is qualified for certification pursuant to KRS 237.138 to 237.142 and this administrative regulation;

(3) An applicant has submitted the material required by KRS 237.138 to 237.142 and this administrative regulation;

(4) Verification that an applicant is a Kentucky resident is made by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412;

(b) Personal knowledge of the sheriff; or

(c) Confirmation by another governmental agency; and

(5) Verification of an applicant's Social Security number is made by submission of:

(a) The applicant's Social Security card; or

(b) A governmental agency document that contains the applicant's name and Social Security number.

Section 5. Completion of Application Form. An applicant shall:

(1) Complete an application in the presence of the sheriff;

(2) Sign the application in the applicant signature block of the application form in ink;

(3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;

(4) Not fold or tear the form;

(5) Use a black ink pen to complete the form;

(6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;

(7) Fill each bubble completely;

(8) Fill in or enter information, as appropriate, within a column block or bubble;

(9) Write within the constrained areas;

(10) Use upper case (capital) letters;

(11) Provide a photograph of the applicant complying with the provisions of 502 KAR 13:060;

(12) Submit the following completed forms to the sheriff to be attached to the application form:

(a) A Peace Officer Range Qualification Certification-LEOSA (KSP 123); and

(b) A Certification Of Law Enforcement Retirement-LEOSA (KSP 124); and

(13) Not be required to pay an application fee.

Section 6. Sheriff's Duties. (1) If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

(a) Destroy the improperly completed application; and

(b) Require the applicant to complete a new application form.

(2) The sheriff shall complete in black ink the upper right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

(a) Completing the ORI Number;

(b) Filling in the date of application;

(c) Indicating the applicant is a retired peace officer;

(d) Indicating the applicant is seeking LEOSA certification, and

(e) Signing in the portion labeled "Authorizing Official Signature."

(3) The sheriff shall place the following material in a single applicant packet:

(a) The applicant's completed application form;

(b) A photograph of the applicant complying with the provisions of 502 KAR 13:060; and

(c) A completed KSP 123 and 124.

(4) The sheriff shall mail single applicant packets:

(a) In a bulk mailer; and

(b) On dates established by the "CCDW-LEOSA Application Mailing Schedule For Sheriffs."

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

(a) "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License," July 2005;

(b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," July 2006;

(c) "Peace Officer Range Qualification Certification-LEOSA," KSP 123, 07/05; and

(d) "Certification Of Law Enforcement Retirement-LEOSA," KSP 124, 08/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

[~~Application. An applicant shall apply to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C by completing the "Commonwealth of Kentucky: Carry Concealed Deadly Weapons — LEOSA Application for License" and submitting it to the Kentucky State Police through the Sheriff's Department of the county in which the applicant resides. A fee shall not be required for the application.~~

~~Section 3. Accompanying Documents. The following documents shall accompany an application:~~

~~(1) Peace Officer Range Qualification Certification - LEOSA (KSP Form Number 123);~~

~~(2) Certification of Law Enforcement Retirement - LEOSA (KSP Form Number 124); and~~

~~(3) A notarized statement that the applicant is not prohibited by state or federal law from possessing a firearm, as required by KRS 237.140(2)(c).~~

~~Section 4. Perform Live-firing Exercises. An applicant shall annually qualify for certification by performing a live firing exercise in which the applicant is required to:~~

~~(1) From a safe position;~~

~~(2) Perform without receiving any assistance in holding, aim-~~

~~ing, or firing from the instructor or any other person; and~~

~~(3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).~~

~~Section 5. Supervision of Live-firing Exercise. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).~~

~~Section 6. Live-Firing Exercise Procedures and Grading. (1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 4(2).~~

~~(2) An applicant shall provide a safe, functional handgun and factory loaded ammunition.~~

~~(3) Prior to conducting range firing, the firearms instructor shall:~~

~~(a) Inspect each applicant's firearm; and~~

~~(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.~~

~~(4) A passing grade shall not be given on range work to an applicant who:~~

~~(a) Does not follow the orders of the firearms instructor;~~

~~(b) In the judgment of the firearm instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or~~

~~(c) Fails to hit the silhouette portion of a target with a majority of the twenty (20) rounds without assistance in holding, aiming, or firing the firearm from the instructor or another person.~~

~~(5) If the applicant successfully completes the live-firing exercise, within five (5) working days after the completion of the live-firing exercise, the firearms instructor shall mail or deliver the completed "Peace Officer Range Qualification Certification – LEOSA" (KSP Form Number 123) showing the applicant's successful completion of the live-firing exercise to the Kentucky State Police, Criminal Identification and Records Branch, CCDW Section, 1250 Louisville Road, Frankfort, Kentucky 40601.~~

~~Section 7. Issuance and Expiration of License. Upon receipt of the documentation required by Sections 3 and 6 of this administrative regulation, the Kentucky State Police shall issue a license confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. A license shall expire on the date listed on the identification card described in Section 8 of this administrative regulation. Any license holder wishing to renew their license shall apply and be approved in the manner described in this administrative regulation for first time applicants.~~

~~Section 8. Identification. If an applicant successfully meets the criteria established by this administrative regulation to carry a concealed deadly weapon, the Kentucky State Police shall provide photographic identification confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.~~

~~(1) The front of the photographic identification card shall include the following information:~~

~~(a) Name of license holder;~~

~~(b) Address of license holder;~~

~~(c) Date of Birth of license holder;~~

~~(d) Law enforcement agency license holder retired from;~~

~~(e) Expiration date of license; and~~

~~(f) LEOSA license identification card number.~~

~~(2) The back of the photographic identification card shall include the following statement: "The Commonwealth of Kentucky hereby certifies that the license holder identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004 (PubL 108-277) and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the standards established by the commonwealth for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Commonwealth of Kentucky – Carry Concealed Deadly Weapons-LEOSA Application for License", July 2005~~

~~(b) "Peace Officer Range Qualification Certification-LEOSA (KSP Form Number 123", July 2005 and~~

~~(c) "Certification of Law Enforcement Retirement LEOSA (KSP Form 124)", July 2005~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601. Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is~~

JOHN (JACK) ADAMS, COMMISSIONER

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard 502/564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application requirements for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions under which honorably retired elected or appointed peace officers are certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Department of State Police and informs the public of the requirements and conditions under which the certification pursuant to 18 U S.C. 926C may be obtained from the Department of State Police.

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

(a) How the amendment will change this existing administrative regulation: Updates application process and supporting documentation of eligibility for certification; and updates material sheriffs are required to provide to the Department of State Police. Revises this administrative regulation to focus solely on the application and issuance process.

(b) The necessity of the amendment to this administrative regulation: Clarification of the responsibilities of the Department of State Police and county sheriffs in the application process is needed.

(c) How the amendment conforms to the content of the author-

izing statutes: This administrative regulation reflects the changes in the application and issuance process as well as the forms utilized by applicants, sheriffs, and the Department of State Police.

(d) How the amendment will assist in the effective administration of the statutes: Updates regarding documentation of eligibility for certification and the material sheriffs are required to provide to the Department of State Police are needed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs, and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Sheriffs will be required to indicate whether the application is for LEOSA certification; Sheriffs will be required to ensure the applicant meets the requirements in KRS 237.138 to142 and verify that the applicant is a Kentucky resident; and the duties of the State Police are not significantly different than currently required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will result in minimal if any additional costs to the applicants, sheriffs, or the Department of State Police.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for licensure; and the application process will be clarified and updated for Sheriffs and the State Police.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for application for LEOSA certification is authorized by statute. No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No fee for application for LEOSA certification is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Other Explanation: See (4)(a)-(d) for explanation.

Education Cabinet
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:170. Kentucky Highly Skilled [~~Distinguished~~] Educator Program criteria.

RELATES TO: KRS 158.782, 158.6455

STATUTORY AUTHORITY: KRS 156 070, 158.782

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.782 requires the Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] to promulgate administrative regulations to set forth the criteria for the Kentucky Highly Skilled [~~Distinguished~~] Educators Program. This administrative regulation establishes the criteria for the program.

Section 1. The Commissioner of Education shall establish a process for the application, review and selection of the state's most outstanding and highly skilled certified educators to be designated as Kentucky highly skilled [~~distinguished~~] educators and fulfill the purposes and requirements of the program in accordance with KRS 158.782(1), (2).

Section 2. The Commissioner of Education shall appoint an advisory committee [~~or committees~~] to assist the Department of Education in the review of candidates and selection of the state's most outstanding highly skilled certified educators to be designated as Kentucky highly skilled [~~distinguished~~] educators. [~~The advisory committee shall also assist the Department of Education in the selection of five (5) of the distinguished educators who shall receive special recognition in accordance with KRS 158.782(2)(b)~~] The advisory committee [~~or committees~~] shall include but not be limited to representation from teachers, school administrators, business, parents, community, higher education, professional education associations, school boards, and the Department of Education.

Section 3. The Application and Selection Process, [~~shall include the following~~] (1) The application process shall be open to certified educators who meet the program criteria and are willing to fulfill the purposes and requirements of the program.

(2) The application and selection process shall allow for self-nomination and provide for a broad spectrum of instructional positions that [~~which~~] include statewide representation.

(3) The Department of Education shall publicize the program criteria and procedures and make educators aware of the opportunity to apply to the Kentucky Highly Skilled [~~Distinguished~~] Educators Program.

(4) Applications for participation in the Kentucky Highly Skilled

[~~Distinguished~~] Educators Program shall be submitted to the Commissioner of Education.

(5) The Commissioner of Education shall complete the identification and designation of Kentucky highly skilled [~~distinguished~~] educators by April [~~May~~] of each year.

Section 4. (1) Candidates for the Kentucky Highly Skilled [~~Distinguished~~] Educators Program shall have the following experience and certification:

(a) A minimum of five (5) years of successful experience as a teacher or as an educational administrator;[.]

(b) A Kentucky certification as an educator; and[.]

(c) Involvement in teaching or administration within the last three (3) years.

(2) Certified practicing and nonpracticing educators shall be eligible to participate in the Kentucky Highly Skilled [~~Distinguished~~] Educators Program.

(3) Educators designated as Kentucky highly skilled [~~distinguished~~] educators shall have demonstrated leadership and management knowledge and skills or demonstrated the capacity to acquire knowledge and skills in the following areas:

(a) Personnel practices, policies, statutes, administrative regulations, and due process;

(b) Written and oral communications;

(c) Budget management and planning;

(d) Organization and planning;

(e) Data analysis and problem solving;

(f) Collaboration and team building;

(g) Working productively with colleagues and culturally diverse populations; and

(h) Initiating, supporting, and sustaining innovations.

(4) Educators designated as Kentucky highly skilled [~~distinguished~~] educators shall have demonstrated curriculum and instructional knowledge and skills or demonstrated the capacity to acquire knowledge and skills in the following areas:

(a) Current educational practices;

(b) Curriculum development and alignment focused on the Kentucky curriculum;

(c) Multiple instructional methodologies; and

(d) Instructional technology.

(5) Candidates must be recognized as having the following personal characteristics:

(a) Integrity;

(b) Personally committed to the welfare of all children;

(c) Flexibility;

(d) Strong sense of purpose and goal orientation;

(e) Sense of humor; and

(f) Sound judgment.

Section 5. The salary for participation in the highly skilled educator program shall be 135 percent of the local educator's total district salary but shall not be more than the average principal salary in the school district with the highest average principal salary. However, an educator who continues in the program beyond the first year shall be eligible for any salary increases the educator would have received as a certified employee in the school district in which the educator was employed when the educator entered the program.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 1256 070(4).

KEVIN NOLAND, Interim Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: October 9, 2007

FILED WITH LRC: October 9, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 27, 2007 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: The name of the program has changed from Distinguished Educator Program to Kentucky Highly Skilled Educator program. This administrative regulation establishes changes to eliminate confusion caused by the change in the name of the program that is currently used in regulation, to reflect the current practice in completion of selecting applicants to the program, and to establish the method for compensating Kentucky's Highly Skilled Educators in administrative regulation.

(b) The necessity of this administrative regulation: It is necessary to change the regulation to reflect the current name of the program The change in date of completion of selection process is necessary to allow the Kentucky Department of Education ample time to notify the local school districts. The process for selecting candidates has been modified and the recommended changes reflect current practice. Finally, the existing method for determining compensation for Highly Skilled Educators has been added to the language in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 158.782 establishes the highly skilled educator program and requires the Kentucky Board of Education to promulgate an administrative regulation to establish criteria for the program. In 1992, 703 KAR 5:170 established the criteria for the Kentucky Distinguished Educator Program. In 1998, the name of the program was changed to the Kentucky Highly Skilled Educator program. The regulation (703 KAR 4:030) that described the criteria for submitting an application to the program and the subsequent process for selecting candidates was never updated with the new name.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes being recommended to this regulation are necessary to reflect the current practice.

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

(a) How the amendment will change this existing administrative regulation: These changes will ensure that the Highly Skilled Educator program criteria produce the most qualified applicants each year. This will, in turn, provide a higher level of service to the assistance level schools that are in need of the most intensive services to reach proficiency.

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

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the current name of the program and updates method of compensation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools up to date specifics for the Highly Skilled Program.

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

of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact highly skilled educator selection and compensation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost for the amendments

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will provide highly qualified highly skilled educators to provide assistance to low performing schools.

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

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Highly Skilled Educator Program State Funding.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

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? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 158.782.

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

(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? The proposed amendments will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendments will require no expected 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:

EDUCATION CABINET

Office of Employment and Training
Division of Unemployment Insurance
(Amendment)

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 the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, 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 the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens 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. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall 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 Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete:

(a) An internet claim registration through the Web site provided by the agency for that purpose at https://uiclaims des ky gov/ebenefit/;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing proof of identity (picture identification), proof of existence (birth certificate), and a valid social security card, and

(b) Presenting all facts in support of his application. [~~at which the claimant may present all facts in support of his application~~].

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unem-

ployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits;

(b) Except as provided in paragraph (d) of this subsection, for the first two weeks of benefits claimed following the effective date of an initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period, except that a worker shall not claim benefits until thirteen (13) days after the day on which the worker filed the initial or reopened claim;

(c) Except as provided in paragraph (d) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period;

(d) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the web site provided by the agency for that purpose at https://uiclaims.des ky gov/ebenefit/; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2)(d). 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 prescribed time, it shall not be allowed.

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

(a) The worker 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; and

(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 unemployment will begin.

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

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may 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:

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

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

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

(a) The "Continued Claim Form", revised 10/95; and

(b) "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2 CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ANDREW FRAUENHOFFER, Office of Employment

APPROVED BY AGENCY: September 29, 2007

FILED WITH LRC: October 1, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007 at 9 a.m. at the Office of Employment and Training, Executive Director's Conference Room, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2007 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 November 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry W. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules and processes by which an unemployed worker may apply for unemployment insurance benefits.

(b) The necessity of this administrative regulation: This administrative regulation is required to establish the means by which an unemployed worker may apply for unemployment insurance benefits as provided by KRS Chapter 341.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the

administration of the unemployment insurance program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The current administrative regulation provides the rules and means by which unemployed workers may apply for unemployment insurance benefits, without which the statutes could not be implemented.

(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 identifies the documents that the unemployed worker is responsible for providing the agency in order to file a valid claim.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to verify the identity of the unemployed workers prior to their obtaining benefits.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment ensures that the unemployed workers are correctly identified prior to unemployment insurance benefits being paid.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 200,000 unemployed workers are affected annually by this administrative regulation. A few hundred employers who file claims on behalf of their workers are affected by Section 4; and approximately 90,000 employers are potentially affected by Section 6. Approximately 70,000 claimants are potentially affected by the proposed 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: As a result of this amendment, an unemployed worker who is a party to a fact-finding investigation will be responsible for providing a valid social security card, birth certificates and picture identification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):There may be some negligible cost in obtaining the documentation, but since these are legal documents that are required for many other official purposes and generally in the possession of the unemployed workers, there is no way to estimate the cost that would be associated with this amendment. In addition, there may be some negligible cost associated with the mailing or faxing of documentation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency will be better able to ensure accurate determination of unemployment benefits for workers, thus reducing overpayments.

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

(a) Initially: There is no initial additional cost associated with the amendment.

(b) On a continuing basis: None associated with the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

(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 will be necessary to implement this amendment and the amendment will not require any increase of fees.

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

(9) TIERING: Is tiering applied? Tiering is applied, because the amendment applies to only those unemployed workers who were disqualified or determined ineligible on the basis of KRS 341.350, 341.360 or 341.370.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. oes 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? Most state and local governmental entities are subject to unemployment insurance coverage and thus are potentially affected by Sections 4 and 6 of 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 151B.020, 341.115, 341.350, 341.360, 341.370 and 341.380.

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? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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

EDUCATION CABINET
Office of Employment and Training
Division of Unemployment Insurance
(Amendment)

787 KAR 1:140. Unemployment insurance fund payments.

RELATES TO: 341.500, 341.510
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 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 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 and approved by the Secretary of the Education Cabinet.

Section 2. Requisitions from the state's account in the Unemployment Trust Fund <u>for claimant benefits or employer refunds</u> 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 desig-

nated by the commissioner and approved by the Secretary of the Education Cabinet. Withdrawals for benefits, [~~if effected,~~] shall immediately be deposited in the benefit account. Withdrawals for employer refunds shall immediately be deposited in the clearing account.

Section 3. (1) A 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 by the Director of the Division of Unemployment Insurance or a person designated by the commissioner and approved by the Secretary of the Education Cabinet. The 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 compensable period for which payment is made;

(e) The check number and the date of issuance;

(f) The program type; and

(g) The claimant's earnings.

(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.

ANDREW FRAUENHOFFER, Office of Employment

APPROVED BY AGENCY: September 28, 2007

FILED WITH LRC: October 1, 2007 at 9 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007 at 9 a.m. at the Office of Employment and Training, Executive Director's Conference Room, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2007 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 November 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. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry W. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes 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 certifying checks to be written and paid for benefits under the program.

(b) The necessity of this administrative regulation: This regulation establishes the system by which funds are requested, benefits and refunds paid and the fiscal integrity maintained.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.500 designates the State Treasurer as the treasurer and custodian of the U.I. fund with authority to administer the fund in accordance with the direction of the secretary and to pay all vouchers approved by the Finance and Administration Cabinet and drawn upon the fund in accordance with regulations prescribed by the secretary. KRS 341.510 stipulates the appropriate use of the funds in the U.I. trust fund account as for the payment of benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the system by which funds are requested, benefits and refunds paid and the fiscal integrity maintained.

(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 references to the authority to draw down funds from the Unemployment Trust Fund for the purpose of issuing refunds to employers who have overpaid their unemployment tax

(b) The necessity of the amendment to this administrative regulation. This amendment is necessary for the regulation to reflect the current processing methods of the agency.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment reflects current practice for the payment of employer refunds and employee benefits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 200,000 unemployed workers are indirectly affected annually by this administrative regulation in that it prescribes the method by which funds are drawn for payment of their unemployment benefits, but there is no direct affect. Similarly, approximately 85,000 contributory employers are potentially and indirectly affected by the provision for drawing down funds for payment of refunds.

(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: This is not applicable because the amendment does not directly affect those entities.

(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 is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no direct benefit as a result of the amendment, although it does clarify the availability of funds to pay employer refunds when due.

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

(a) Initially. There is no cost associated with this amendment.

(b) On a continuing basis: There is no cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

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

(9) TIERING. Is tiering applied? Since this amendment only changes the language of the regulation to reflect internal agency practice, the impact (that is, the lack of any direct impact) is the same of everyone and there is no tiering.

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? Most state and local governmental entities are subject to unemployment insurance coverage and thus potentially affected 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 151B.020, 341.115, 341.500 and 341.510.

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? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

EDUCATION CABINET
Office of Employment and Training
Division of Unemployment Insurance
(Amendment)

787 KAR 1:230. Date of receipt of documents defined.

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 the date of receipt of documents required for the administration of 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 of the Department for Workforce Investment shall be considered received by the department as of the date recorded by the contractor and transmitted to the department. Any report or payment delivered to a contractor of the department 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 or post office is closed, the next day the office or the post office is open shall be considered the due date.

ANDREW FRAUENHOFFER, Department for Workforce Investment

APPROVED BY AGENCY: September 28, 2007

FILED WITH LRC: October 1, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007 at 9 a.m. at the Office of Employment and Training, Executive Director's Conference Room, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by November 20, 2007 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 November 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry W. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the date of receipt for the purposes of documents required for the administration of the UI program.

(b) The necessity of this administrative regulation: This administrative regulation provides the basis for establishing timely or untimely receipt of documents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) provides that the Secretary shall have the authority to adopt and amend regulations necessary for the proper administration of the UI program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the basis for determining timely or untimely receipt of documents for several purposes of UI program administration, including penalties and interest for late reports and payments, claiming of benefits and filing of appeals.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds days that the US Post Office is closed to the occasions when a due date may be advanced to the next day that the office is opened. This reflects current agency practice and recognizes that there are now several occasions each year when state and federal holidays differ.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the authority to advance a due date when the post office is closed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) provides that the secretary shall have the authority to adopt and amend regulations necessary for the proper administration of the UI program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify both for claimants and for agency staff the correct due date on occasions when the post office is closed but agency offices are open.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation affects approximately 85,000 covered employers and an undetermined number of claimants who file paper continued claims forms and other documents

each year.

(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. The amendment reflects current agency practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment, and employers would potentially save penalty and interest costs by the advancement of the due date.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities shall have extra time to file required reports, payments and documents when the post office is closed but agency offices are opened.

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

(a) Initially: There is no cost associated with this amendment since it reflects current agency practice.

(b) On a continuing basis: There is no cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

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

(9) TIERING. Is tiering applied? Tiering is not applied because this regulation establishes uniform standards applicable to all employers and claimants.

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? Most state and local governmental entities are subject to unemployment insurance coverage and thus are affected 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 151B.020, 341.115, 341.262, 341.300, 341.380, 341.430(2), 341.450(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(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? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

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

803 KAR 2:310. Medical services and first aid.

RELATES TO: KRS 338.051(3), 338.061[~~, 29 C.F.R. 1910.151~~]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 .

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may adopt established federal standards and national consensus standards. [~~29 C.F.R. 1910.151 establishes the federal standards relating to medical services and first aid.~~] This administrative regulation establishes the medical services and first aid standards to be enforced by the Office of Occupational Safety and Health in the area of general industry.

Section 1. The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.

(1) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and adequate first aid supplies shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who, while performing their duties, are away from the premises more than fifty (50) percent of the time shall not be included in determining the number of employees.

(2) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. Adequate first aid supplies shall be readily available.

Section 2. If the eyes or body of any person may be exposed to injurious corrosive material, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use. The facilities shall comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Equipment", which is incorporated by reference, with the following exceptions:

(1) In a remote area if a person is visibly or audibly separated from coworkers, an audible or visible alarm shall activate to alert appropriate personnel when the unit is in use; or in the alternative, a two (2) way communication device shall be used. The alarm shall continue until
the unit is no longer in use.

(2) A facility shall be tested according to the standard monthly.

Section 3. [~~General industry shall comply with 29 C.F.R. 1910.151, "Medical services and first aid", and its Appendix, revised as of July 1, 2005.~~

~~Section 4.~~] Incorporation by reference. (1) ANSI Z-358.1-1990, "Standards for Emergency Eyewash and Shower Equipment", [~~1990,~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Office of Occupational Safety and Health, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4 30 p.m.

PHILIP ANDERSON, Commissioner
LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 11, 2007
FILED WITH LRC: October 15, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007 at the Kentucky Department of Labor, 1047 U.S. HWY 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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 Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564- 3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, requires regulated employers ensure the availability of medical personnel for advice and consultation on matters of occupational health, have persons adequately trained to render first aid, and provide first aid supplies. In Section 2, regulated employers are required to provide suitable facilities for the quick drenching and flushing of the eyes and body where employees are exposed to injurious corrosive material. These facilities must comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Facilities." Also, this administrative regulation is updated to meet the requirements of KRS Chapter 13A.

(b) The necessity of this administrative regulation: This administrative regulation, as amended, is necessary in order to clarify the requirements of the regulation. The most recent amendment of this regulation, effective December 2, 2005, created Section 3 which stated that employers must comply with 29 C.F.R. 1910.151, "Medical services and first aid", and its Appendix, revised as of July 1, 2005. The requirements of Section 1 and Section 2 are inclusive of and expand upon the requirements of 29 C.F.R. 1910.151. Thus, the inclusion of Section 3 results in unnecessary ambiguity and confusion with Section 1 and Section 2, but carries no additional regulatory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation will clarify employers' responsibilities for protecting worker safety and health, saving employers' the time and expense otherwise incurred.

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

(a) How the amendment will change this existing administrative regulation:This administrative regulation, in Section 1, requires regulated employers ensure the availability of medical personnel for advice and consultation on matters of occupational health, have persons adequately trained to render first aid, and provide first aid supplies. In Section 2, regulated employers are required to provide suitable facilities for the quick drenching and flushing of the eyes and body where employees are exposed to injurious corrosive material. These facilities must comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Facilities." Also, this administrative regulation is updated to meet the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation, as amended, is necessary in order to clarify the requirements of the regulation. The most recent amendment of this regulation, effective December 2, 2005, created Section 3 which stated that employers must comply with 29 C.F.R. 1910.151, "Medical services and first aid", and its Appendix, revised as of July 1, 2005. The requirements of Section 1 and Section 2 are inclusive of and expand upon the requirements of 29 C.F.R. 1910.151. Thus, the inclusion of Section 3 results in unnecessary ambiguity and confusion with Section 1 and Section 2, but carries no additional regulatory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify employers' responsibilities for protecting worker safety and health, saving employers' the time and expense otherwise incurred.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation affects all private and public sector employers in the Commonwealth who are covered by KRS Chapter 338 and are engaged in general industry work.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities regulated by this amended regulation will not be required to take additional actions or incur additional costs of compliance. This amendment removes ambiguous language, but does not alter or add to current regulatory requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
Entities regulated by this amended regulation will not be required to take additional actions or incur additional costs of compliance. This amendment removes ambiguous language, but does not alter or add to current regulatory requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment benefits regulated entities in that it will clarify their responsibilities for protecting worker safety and health, and will save the time and expense otherwise incurred were the clarification not made.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no continuing costs incurred in order implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
Current state and federal funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The Office of Occupational Safety and Health Program's regulations affect all employers with one (1) or more employees. Inspections are conducted at facilities that pose high risks to worker safety and health, where the agency has received referrals, worker com-

plaints, or where a work-related fatality, amputation, or an accident resulting in the hospitalization of one (1) or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This administrative regulation, in Section 1, requires regulated employers ensure the availability of medical personnel for advice and consultation on matters of occupational health, have persons adequately trained to render first aid, and provide first aid supplies. In Section 2, regulated employers are required to provide suitable facilities for the quick drenching and flushing of the eyes and body where employees are exposed to injurious corrosive material. These facilities must comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Facilities." Also, this administrative regulation is updated to meet the requirements of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation, in Section 1, requires regulated employers ensure the availability of medical personnel for advice and consultation on matters of occupational health, have persons adequately trained to render first aid, and provide first aid supplies. In Section 2, regulated employers are required to provide suitable facilities for the quick drenching and flushing of the eyes and body where employees are exposed to injurious corrosive material. These facilities must comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Facilities." Also, this administrative regulation is updated to meet the requirements of KRS Chapter 13A.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amended administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amended administrative regulation affects any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in general industry operations.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This amended administrative regulation will affect all private and public sector employers in the Commonwealth who are covered by KRS Chapter 338 and engaged in general industry operations.

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

Revenues (+/-): None
Expenditures (+/-): None
Other explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Division of Oil and Gas Conservation
(Amendment)

805 KAR 1:110. Underground injection control.

RELATES TO: KRS 353.520
STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.560, 353.592

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the Department of Mines and Minerals to administer and enforce the provisions of KRS 353.500 to 353.720. The waste of oil and gas is prohibited by KRS 353.520, which provides that such prohibited waste includes the unreasonable damage to underground, fresh or mineral water supply, workable coal seams, or other mineral deposits in the operations for the discovery, development, production, or handling of oil and gas, the unnecessary or excessive surface loss or destruction of oil or gas or their constituents and the drowning with water of any stratum or part thereof capable of providing oil or gas in paying quantities, except for secondary recovery purposes, or in hydraulic fracturing or other completion practices. Further, KRS 353.592 authorizes the department to develop a regulatory program for the purpose of accepting primary responsibility for the administration of the Underground Injection Control Program. Therefore, it is the purpose of this administrative regulation to regulate the drilling, casing, operation, plugging, construction, conversion, and maintenance of Class II wells and [~~It is the purpose of this administrative regulation~~] to protect fresh water zones from contamination associated with the production of oil and gas.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:

(1) "Administrator" means the regional administrator for Region IV of U.S. EPA.

(2) "Area of review" means that area within not less than a fixed radius of one-fourth (1/4) mile around an injection well; provided, however, that at the option of the permit applicant, the area of review may be deemed to be the zone of endangering influence calculated in accordance with 40 C.F.R. 146.06.

(3) "Aquifer" means an underground geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(4) "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud or fluids into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

(5) "Cementing" means the operation whereby a cement slurry is displaced around the casing's annulus using approved engineering methods.

(6) "Class II well" means a well which injects fluids:

(a) Which are brought to the surface in connection with conventional oil, natural gas, or coalbed methane production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; or

(b) For enhanced recovery of oil or natural gas; or

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(7) "Commercially producible" means a well which can be used commercially for the production of oil and gas, or for Class II injection.

(8) "Confining bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

(9) "Confining zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

(10) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(11) "Date of primacy" means the effective date of the Administrator's approval of Kentucky's Underground Injection Control (UIC) Program, made pursuant to Section 1425 of the Safe Drinking Water Act.

(12) "Department" means the Kentucky Department for Natural Resources.

(13) "Director" means the Director of the Kentucky Division of Oil and Gas Conservation.

(14) "Division" means the Kentucky Division of Oil and Gas Conservation.

(15) "Endanger" means that an injection operation may result in the presence of a contaminant in ground water, which supplies or can reasonably be expected to supply any public water system, and that the presence of that contaminant, or any contaminant may result in such system not complying with any national primary drinking water regulation, or may otherwise adversely affect the health of persons.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "Formation breakdown pressure" means indicated values from data recorded prior to and during squeeze cementing, acidizing, or hydraulic fracturing treatments performed by appropriate service companies. These breakdown pressure values are frequently reported as the surface gauge pressure which shall, through appropriate engineering calculations, be modified to reflect the pressure at which an exposed formation fractures and allows fluid to be injected into the formation.

(18) "Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.

(19) "Flow rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine, or passes along a conduit, or channel.

(20) "Fluid" means any material or substance which flows or moves whether in a semi-solid, liquid, sludge, gas, or other form or state.

(21) "Freshwater" is defined as an underground source of drinking water (USDW).

(22) "Freshwater zone" means underground source of drinking water.

(23) "Ground water" means water below the land surface in an aquifer's zone of saturation.

(24) "Injection well" means a well into which fluids are being injected.

(25) "Instantaneous Shut-In Pressure" (ISIP) means the pressure observed (recorded) at the wellhead immediately after the fracturing treatment. ISIP is that static pressure required to hold a fracture open, to inject fluids into an established fracture system under dynamic conditions if there were no pipe or perforation frictional pressure losses influencing the observed (recorded) surface pressure.

(26) "Injection zone" means a geological formation, group of formations, or part of formation receiving fluids through a well.

(27) "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

(28) "Mechanical integrity" means a condition of injection wells which exists if there is no leakage in the well's casing, tubing, or packer and no fluid movement into an underground source of drinking water through vertical channels adjacent to the well bore.

(29) "Owner or operator" means the company or person(s) which have secured a permit from the division and responsible for any facility or activity.

(30) "Packer" means a device lowered into a well to produce fluid–tight seal.

(31) "Plugging" means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation by the placement of cement plugs in the wellbore.

(32) "Project" means a group of wells in a single operation.

(33) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.

(34) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(35) "Step-rate" means water or other fluid injection type testing performed specifically to determine the formation breakdown pressure of the injection zone prior to the initiation of the enhanced recovery project.

(36) "Stratum" means a single sedimentary bed or layer, regardless of thickness that consists of generally the same kind of rock material.

(37) "Surface casing" means the first string of well casing to be installed in the well to protect freshwater zones and provides support for deeper casing strings and rig stabilization.

(38) "Underground source of drinking water (USDW)" means an aquifer or its portion:

(a)1. Which supplies any public water system; or

2. Which contains a sufficient quantity of groundwater to supply a public system; and

a. Currently supplies drinking water for human consumption; or

b. Contains less [~~fewer~~] than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

[~~(2) "Aquifer" means geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.~~

~~(3) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.~~

~~(4) "Class II well" means a well which injects fluids:~~

~~(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; or~~

~~(b) For enhanced recovery of oil or natural gas, or~~

~~(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.~~

~~(5) "New Class II well" means a Class II well on which drilling or conversion commenced later than thirty (30) days after the date of primacy.~~

~~(6) "Existing Class II well" means all Class II wells other than new Class II wells.~~

~~(7) "Date of primacy" means the effective date of the Administrator of the Environmental Protection Agency's approval of Kentucky's Underground Injection Control (UIC) Program, made pursuant to section 1425 of the Safe Drinking Water Act.~~

~~(8) "Area of review" means that area within not less than a fixed radius of one-fourth (1/4) mile around an injection well, provided, however, that at the option of the permit applicant, the area of review may be deemed to be the zone of endangering influence calculated in accordance with 40 CFR 146.06, which is adopted and incorporated herein by reference.~~

~~(9) "Endanger" means that an injection operation may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and that the presence of that contaminant may result in such system not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.~~

~~(10) "Freshwater" is defined as a USDW.~~

~~(11) "Project" means a group of wells in a single operation.~~]

Section 2 General. (1) No person shall drill a Class II well without first obtaining a permit to drill pursuant to KRS 353.570(1) and (2).

(2) No person shall inject fluids to the subsurface through a Class II well without the authorization of the division [~~director~~]. Such authorization shall take the form of a permit issued pursuant to Section 11[8] of this administrative regulation [~~or of a permit by rule conferred in accordance with Section 4 of this administrative regulation~~].

(3) The owner or operator of a Class II well is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation pursuant to the require-

ments in Section 8 of this administrative regulation [~~in a manner prescribed by the director~~].

(4) The fee requirements for an application to drill a new Class II injection well pursuant to KRS 353 590 shall suffice for and be applicable to the permit to inject.

(5) The permit to operate any Class II well may be transferred to a successor only after notice is given to the director. Such notice, filed on form ED-26, incorporated by reference, shall include at least the following:

(a) The original operator's company name and address.

(b) The successor's company name and address.

(c) The permit number of the well.

(d) The Carter Coordinate location.

(e) The farm name and well number.

(f) Signatures of the original operator and the successor, or that of their official representative(s).

(g) A statement that the successor assumes all responsibility for the well, and provides financial responsibility pursuant to Section 8 of this administrative regulation

(h) A Class II well with an outstanding noncompliance will not be transferred unless the successor is willing to correct deficiencies and submits a corrective action plan which is approved by the division.

(6) All Class II wells shall be plugged in the manner established in 805 KAR 1:060 and 805 KAR 1:070, whichever is applicable

(7) No injection permit shall be issued unless the applicant demonstrates [~~An applicant for an injection permit shall be required to satisfy the director~~] that the Class II well will not endanger a USDW.

(8) [~~No permit by rule shall be interpreted as authorizing injection through a Class II well which endangers a USDW.~~

~~(9)~~] If the division determines [~~director concludes~~] that casing and cementing of a Class II well [~~authorized by rule~~] is inadequate and that movement of fluids endangers USDW, the division[~~The director~~] shall require [~~an individual permit or notify~~] the owner or operator of such well to take [~~of~~] necessary corrective action. [~~Any such~~] Corrective action shall [~~must~~] be completed within ninety (90) days [~~one (1) year~~] of notification of the owner or operator of notification from the division to the owner or operator no injection is authorized until the corrective action has been completed and a mechanical integrity test has been conducted.

(9) [~~(10)~~] In administering and applying this administrative regulation, the division [~~director~~] shall, to the maximum practicable extent, take into account the varying geologic, hydrological and historical conditions in different areas within the state. The division [~~director~~] may, where consistent with other provisions of this section, upon application and after notice and hearing, grant a variance from any requirement of this administrative regulation upon a showing that alternate prudent engineering practices will protect a USDW.

Section 3. Exempted Aquifers. An aquifer or a portion thereof which meets the criteria established in this section for a USDW may be determined by the division [~~director~~] to be an "exempted aquifer" if it meets the following criteria:

(1) It does not currently serve as a source of drinking water; and

(2) It cannot now and will not in the future serve as a source of drinking water because.

(a) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible;

(b) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(c) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

[~~(d) It is located over a Class III mining area subject to subsidence or catastrophic collapse; or~~]

(3) The total dissolved solids content of the groundwater is more than 3,000 mg/l and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

Section 4. [~~Permit by Rule. (1) All existing Class II wells are granted a permit by rule and authorized to inject fluids to the subsurface provided that the owner or operator:~~

~~(a) Maintains compliance with all applicable requirements of Sections 5 and 7 of this administrative regulation; and~~

~~(b) Within one (1) year from the effective date of this administrative regulation, files an area plat or plats showing all of the Class II wells subject to the permit by rule. The plat(s) submitted must show the existing Class II wells and all lessors' and lessees' names and boundaries, and shall be prepared and certified as accurate and correct by a licensed Kentucky Land Surveyor.~~

~~(2) All new Class II wells, constructed as part of an existing injection project, may be operated by rule after the following information has been submitted to and approved by the director:~~

~~(a) The application to operate by rule shall be submitted on forms provided by the director and shall be identical to application forms used for new Class II wells (Section 8 of this administrative regulation).~~

~~(b) All the requirements of Section 8 of this administrative regulation shall apply except subsections (1)(c)7 and 8 and (3) of this section.~~

~~(c) The plat submitted with said application to inject into a new Class II well in an existing project shall satisfy the applicable requirements of Section 8 of this administrative regulation and shall also show the proposed well location in the existing project, and that its location falls within an area having wells conforming to a geometric pattern already established.~~

~~(3) Injection of fluids to the subsurface shall not be made until a permit to inject is issued.~~

~~Section 5.~~] Requirements Applicable to All Class II Well Permits. Authorization to inject fluids through all Class II wells [~~(whether by rule or by individual permit)~~] shall be conditioned upon compliance with the following requirements:

(1) The owner or operator [~~permittee~~] shall promptly notify the director in writing of any modification in the manner in which the injection operation is conducted or of any mechanical failure or downhole problem encountered in the operation of the Class II wells or upon recognition of a failure in an injection system. Said well or wells which appear to be leaking shall be shut down immediately and correction procedures shall be initiated within fifteen (15) days, or the permit to inject may be revoked. The prescribed notice to the director shall describe all proposed modifications or corrective actions and shall be subject to the approval of the director

(2) The owner or operator [~~permittee~~]shall afford the director, or his authorized representative(s) upon proper presentation of credentials, access to Class II wells and related facilities for the purpose of conducting inspections, witnessing mechanical integrity tests, corrective action operations and plugging procedures and testing samples of injected fluids.

(3) The owner or operator [~~permittee~~]shall regulate the injection pressure in such a manner that the pressure in the injection zone does not initiate new fractures or propagate existing fractures in the confining zone which would cause the movement of injected fluids into a USDW. The director may, when necessary to ensure [~~insure~~] compliance with this requirement, establish limitations on the wellhead pressure at which Class II wells may be operated. Any such limitation shall be included as a permit condition or through an order issued after notice and opportunity for hearing.

(4) The owner or operator [~~permittee~~] shall provide for the mechanical integrity of the well by operating without [~~significant~~] leaks in the casing, tubing, or packer and without [~~significant~~] fluid movement into a USDW through vertical channels adjacent to the well bore. The owner or operator [~~permittee~~] shall, upon request of the division [~~director~~], conduct tests of the mechanical integrity of the Class II wells, utilizing a method approved by the division as required in Section 6 of this administrative regulation [~~director~~]. [~~Otherwise, tests shall, as nearly as practicable, be scheduled at five (5) year intervals and the permittee shall certify the test results to the director in writing within fifteen (15) days subsequent to the test.~~] Each Class II well shall be tested for mechanical integrity at

least every five (5) years pursuant to Section 6(6) of this administrative regulation. Any alternative mechanical integrity test authorized by the division shall be approved by the administrator.

(5) The owner or operator [~~permittee~~] shall monitor and record injection pressures rates and volumes at least monthly and shall submit on forms provided by the division [~~director~~], an annual report of the results of such monitoring to the division [~~director~~]. The owner or operator [~~permittee~~] shall retain all such records on file for a period of five (5) years. The owner or operator of hydrocarbon storage or enhanced recovery wells may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if such facilities consist of more than one (1) injection well, operate with a common manifold, and provided the owner or operator demonstrates to the division [~~director~~] that manifold monitoring is equivalent [~~comparable~~] to individual well monitoring.

[~~(6) For purposes of this section, a permittee shall include the owner or operator of a well authorized by rule under Section 4 of this administrative regulation.~~]

Section 5. [~~6.~~] Construction Requirements for All [~~New~~] Class II Wells. (1) All [~~new~~] class II injection wells proposed to be constructed after the effective date of primacy shall be constructed in accordance with applicable provisions of KRS 353.570(1) and (2) and 805 KAR 1.020 in a manner that will prevent injected fluids from escaping to a USDW. Existing Class II wells authorized under EPA are exempt from this requirement unless the division determines that corrective action is necessary to prevent injected fluids from escaping to a USDW. A freshwater string of casing must extend fifty (50) feet below the freshwater depth stated on the permit or the base of the deepest fresh water, whichever is greater. All freshwater casing strings shall have cement circulated to fill the annular space of [~~outside~~] said casing. Such casing shall be cemented, using approved engineering methods to assure the circulation [~~return~~] of the cement to the surface. The long string of casing shall [~~must~~] extend at least from the surface to immediately above the injection interval, and must have a minimum of 300 feet of cement behind the lowermost 300 feet of casing If the fresh water is not protected by a separate string of casing, then the long string shall [~~must~~] be cemented with circulation of cement back to surface [~~from top to bottom~~]. Tubing shall be installed in the casing with a packer set at a depth not to exceed fifty (50) feet above the injection zone. The owner or operator shall provide a detailed description of the casing plan on Form ED-25, incorporated herein by reference, and submitted with the application for permit to inject. The casing plan shall be approved by the director and shall include a listing of the casing size, type, grade, depth of each casing string, and the class and volume of the cement to be used

(2) Any active oil and gas well, or an abandoned or plugged well reopened for the purpose of conversion to a [~~new~~] Class II injection well, shall satisfy the requirements for cementing of [~~new~~] Class II wells. If perforation of existing casing is required to satisfy the [~~current~~] cementing requirements [~~administrative regulations~~] during the conversion of said well(s) to a [~~new~~] Class II well, a tubing and packer shall be installed in the existing casing to the area immediately above the injection interval, not to exceed fifty (50) [~~100~~] feet above said injection interval.

(3) All [~~new~~] Class II disposal wells shall be designed to ensure [~~insure~~] that disposal zones are hydraulically isolated from USDW.

(4) The owner or operator shall provide the division with all required geophysical logs and other tests conducted during the drilling and completion of Class II wells which specifically relate to the USDW(s) and the confining zone adjacent to it, and the injection and adjacent formations, and shall include the following:

(a) A log(s) marked to indicate all fresh water zones, the confining zone(s) and the injection interval;

(b) a geologic description of the confining and injection zone(s) that shall include the lithologic description, geologic name, and thickness;

(c) A report describing the nature of fluids and formation pressure in the injection zone. This information may be obtained from geophysical logs, physical examinations of samples and cores, and chemical analysis, etc. and shall be prepared by a professional geologist registered in the state of Kentucky. The owner or operator may substitute information from nearby wells if they are comparable to the injection well, and in the case of an area permit, sufficient information from wells within the field to adequately describe the whole field

Section 6. [~~7.~~] Mechanical Integrity Requirements for all Class II Injection Wells. All operators shall demonstrate mechanical integrity of new and existing Class II injection wells. The owner or operator shall submit a plan to demonstrate mechanical integrity with the application for permit to inject.

(2) An injection well is determined to have mechanical integrity if:

(a) There are no leaks in the casing, tubing, or packer, and,

(b) There is no fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(3) One (1) of the following methods shall be used to confirm the absence of leaks under paragraph (2)(a) of this section:

(a) Regular monitoring of annular pressure provided that an initial pressure test has been run; or

(b) Pressure test with a liquid or gas, or

(c) Records of monitoring showing the absence of change in the relationship between injection pressure and injection flow rate for Class II enhanced recovery wells.

(4) One (1) of the following methods shall be used to confirm the absence of fluid movement under subsection (2)(b) of this section:

(a) The results of a temperature log or noise log, cement bond log, or

(b) Cementing records demonstrating the presence of adequate cement to prevent such migration, or

(c) Such other methods approved by the administrator.

(5) The mechanical integrity test shall be performed on the annulus of the tubing and casing. A minimum pressure of 300 psi shall be applied to the annulus of the tubing and casing. The well is considered to have mechanical integrity if, at the end of thirty (30) minutes, there is no more than a plus or minus of three (3) percent change of the test pressure on the gauge All mechanical integrity tests shall be witnessed and approved by a division field inspector. The director may require higher test pressures to be used when the anticipated injection pressure will be high. The test results shall be filed on Form ED-22, incorporated herein by reference [~~The following methods are considered sufficient to establish mechanical integrity:~~

~~(1) All permittees of new or converted Class II injection wells shall perform mechanical integrity test(s) of the installation(s) prior to injection to ensure there are not leaks in the system(s). The test pressure must exceed the maximum anticipated injection pressure by at least 100 psi. Pressure and rate sensitive devices must be used to ensure there are no significant changes in pressure or volume of fluids injected. The test results shall be filed on forms approved by the director.~~]

(6)[~~(2)~~] The owner or operator [~~permittee~~] of all Class II wells[~~, both new and existing,~~] shall schedule [~~as nearly as practicable~~] at five (5) year intervals or less, mechanical integrity test(s) as described in subsection (5) of this section The owner or operator shall certify the test results to the division in writing within fifteen (15) days of completion of the test.

(7) The owner or operator shall not perform mechanical integrity test(s) of any Class II well without giving written notice to the division within fifteen (15) calendar days prior to the proposed test date. The division shall then notify the owner or operator of the earliest possible date available to test the well.

Section 7. Area of Review for Class II Wells. The owner or operator shall supply the following information when applying for a permit to inject pursuant to Section 11 of this administrative regulation:

(1) A description of the area of review which shall be determined by

(a) A fixed radius of one-fourth (1/4) mile around the injection well; or one-fourth (1/4) mile around the permit area boundary; or

(b) The zone of endangering influence calculated in accordance with 40 C F R. 146 6 for an area of review less than one-fourth (1/4) mile The use of a mathematical model will not be al-

lowed by the division until approval is granted by the administrator. If a request is made by the owner or operator to use such a mathematical model for determining the area of review a copy of all such material provided to the division shall be forwarded to the administrator for review and approval, and if approval is not granted by the administrator the method described in (1)(a) of this section shall be used.

(2) The owner or operator of Class II wells shall submit a map showing the following information within the area of review:

(a) Existing producing wells, injection wells, abandoned wells, dry holes and water wells; and

(b) Surface and subsurface mines, quarries and other pertinent surface features including residences, roads, and faults; and

(c) The distribution manifold applying injection fluid to all wells in the area of review including all system monitoring points, for those injection wells, if operating from a common manifold.

(3) The following data for any wells within the area of review shall be submitted:

(a) A tabulation of data, reasonably available from public records or otherwise known to the applicant, including a description of well type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information; and

(b) The record of completion and plugging for each well which penetrates the injection zone, and any other wells within the area of review wells which would be affected by any proposed increase in pressure if the injection well(s) is to be operated over the fracture pressure of the injection formation.

(4) The owner or operator of any wells in the area of review which are improperly sealed, completed, or abandoned, shall submit a corrective action plan which consists of steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water. The division may consider the following criteria and factors during evaluation of the corrective action plan:

(a) Nature and volume of injected fluids;

(b) Nature of native fluids or by-products of injection;

(c) Potentially affected population;

(d) Geology;

(e) Hydrology;

(f) History of injection operations;

(g) Completion and plugging records;

(h) Plugging procedures at the time of abandonment; and

(i) Hydraulic connections with underground sources of drinking water.

Section 8. Financial Responsibility. (1) The owner or operator of all Class II wells shall demonstrate financial responsibility to plug and abandon said well(s).

(a) Financial responsibility of existing Class II wells prior to the date of primacy shall be submitted to the division pursuant to Section 9 of this administrative regulation.

(b) The owner of operator of Class II wells authorized by a permit to inject pursuant to these regulations shall at the time of application, demonstrate financial responsibility and submit the plugging abandonment plan in accordance with 805 KAR 1:060 or 805 KAR 1:070.

(2) The owner or operator shall provide financial coverage to adequately plug the well pursuant to the individual well bond requirements of KRS 353.590(5). In the event that the division issues a letter of violation, forfeits the individual bond, and subsequently plugs the well, the owner or operator shall be responsible for any additional costs expended by the division for plugging the well which exceeds the bond amount. These costs, if not paid, shall be recovered by civil suit pursuant to KRS 353.180(3). In addition to the recovery of costs, the owner or operator shall be subject to penalties as prescribed in KRS 353.992.

Section 9. Transitional Requirements for Owner or Operators of Class II Wells.

(1) The division shall accept Class II well permits, including rule authorized wells, issued under the authority of the EPA administered program. The division shall accept records from EPA of all authorized wells and shall create an inventory of approved existing wells. The financial responsibility demonstration required in Section 8 of this administrative regulation and the submission of the plugging and abandonment plan in Section 10 of this administrative regulation shall be completed within ninety (90) days following the effective date of primacy. If the existing bond posted with EPA meets the requirements of Section 8 of this administrative regulation and is transferable to the division, the transfer of said bond shall be accepted by the division.

(2) The owner or operator of Class II wells having mechanical integrity test(s) approved by EPA shall remain on the same schedule of mechanical integrity tests, upon the effective date of primacy. A copy of all documents showing approval by EPA of the well(s) mechanical integrity, and a copy of all forms, test data, and logs required by and submitted to EPA shall be submitted to the division within ninety (90) days of the effective date of primacy.

(3) The owner or operator of pending application(s) submitted for Class II wells under the EPA program, may transfer such pending application(s) to the division, and shall satisfy the permitting requirements in Section 11 of this administrative regulation upon the effective date of primacy.

(4) The owner or operators of Class II wells which have been shut-in under approval from EPA may be allowed to keep such wells shut-in up to the time limit allowed by EPA, if a copy of EPA authorization is forwarded to the division within ninety (90) days of the effective date of primacy.

Section 10. Plugging and Abandonment of Class II Wells. All Class II wells shall be plugged in accordance with 805 KAR 1:060 or 805 KAR 1:070, whichever is applicable. The owner or operator shall notify the division in writing thirty (30) days prior to plugging and shall schedule with the division inspector a time and date for performing the plugging procedure. The inspector shall schedule the earliest date available. Upon completion of the plugging, the owner or operator shall file a plugging affidavit on Form ED-38. [~~The following methods may be used:~~

~~(a) Subsection (1) of this section shall suffice; or~~

~~(b) For existing Class II wells, and new wells at least five (5) years old, the applicant may, subject to approval of the director, in lieu of the test described in subsection (1) of this section file historical injection records only on an individual well basis. Said records must show weekly volume and pressure rates in tabular or graphic form that reflect rate of volume or pressure variation within the injection system for a period of five (5) years or the life of the well, whichever is shorter, and must be certified by the operator as correct and accurate.~~]

Section 11. [~~8.~~] Requirements for a Permit to Inject into [~~New~~] Class II Wells. (1) All persons seeking to permit a Class II well shall, after the effective date of primacy, comply with the requirements of this section. No person shall inject fluids to the subsurface through a [~~new~~] Class II well without obtaining a permit to inject. An application to inject [~~This permit shall be issued under the authorization of the director. Existing wells satisfying the requirements of Section 4 of this administrative regulation shall be permitted by rule. To obtain a permit to inject, an applicant shall submit to and have approved by the director an application. The application~~] shall be submitted on form ED-14 [~~forms provided by the director~~] and shall include [~~such information as the director deems necessary for the issuance of the permit, including all of the following~~]:

(a) A statement by the operator as to whether the well is to be used for enhanced recovery, hydrocarbon storage, or for disposal purposes.

(b) The approximate depth [~~depths~~] of the deepest known freshwater zone [~~zones~~].

(c) A location plat for a permit to inject into a Class II injection well shall be prepared in accordance with 805 KAR 1:030.

(d) An area of review map shall be prepared on a topographic map and [~~and certified as accurate and correct by a registered Kentucky Land Surveyor. Said plat~~] shall include the following information:

1. The location of all known freshwater wells;

2. The location and completion and/or plugging record of all wells, whether producing or plugged;

3. The location of hazardous waste, treatment or disposal facilities;

4. The location of rivers or streams;

5.The location of quarries and surface and subsurface mines;

6. The location of faults; and

7. The location of permanent residences.

(e) A schematic diagram of the well showing the following:

1. The total depth of the plugback of the well.

2. The depth of the injection or disposal interval.

3. The geological name of the injection or disposal zone.

4. The geological name, thickness, and description of the confining zone.

5. The vertical distance separating the uppermost extremity of the injection zone from the base of the lowest USDW.

6. The depth of the top and the bottom of the casing and the cement.

7. The size of the casing and tubing and the depth of the packer.

8. The depth to the base of the lowermost underground source of drinking water.

(f) For the conversion of an existing well, a copy of the completion report and any available geophysical log of the well.

(g) Proposed operating data as follows:

1. The geological name, depth, and location of the source of the injection fluid

2. A standard laboratory analysis of a representative sample of the fluid to be injected under the proposed Class II permit, with the following parameters:

a. Barium if sulfate is less than 500 mg/l.

b. Calcium;

c. Total Iron;

d. Magnesium;

e. Sodium;

f. Bicarbonate;

g. pH;

h. Specific Gravity;

i. Carbon Dioxide.

j. Total Dissolved Solids; and

k. Hydrogen Sulfide if H_2S odor is detected.

3. A material safety data sheet shall be provided for any inhibitors added to the injection fluid for control of scaling, corrosion or bacterial growth.

4. The nature of the annulus fluid to be used in the annulus between the tubing and casing. This description should include the type of fluid to be used and the corrosivity of the annulus fluid. The amount of inhibitor to be added shall be listed.

5. The proposed maximum injection rate and pressure. The owner or operator shall limit injection pressure to either a value:

a. that does not exceed a maximum injection pressure at the wellhead calculated to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to an underground source of drinking water and will not cause the movement or injection of fluids into an underground source of drinking water; or

b. for wellhead pressure calculated by using the following formula:

Pmax = (0.733 psi/ft - (.433 psi/ft (Sg)))d

Where: Pmax = Maximum injection pressure (psia) at the wellhead

Sg = Specific gravity of the injected fluid.

d = Depth to the top of the injection zone in feet.

(h) The location and description of each underground source of drinking water through which the well would penetrate.

(i) A description of the current or proposed casing program on Form ED-25, including the following:

1. Casing size, weight, and type.

2. Cement volume and type.

3. Packer type.

(j) A description of all proposed stimulation programs.

(k) A description of proposed plans to cope with all shut-ins or well failures, so as to prevent migration of fluids into any underground source of drinking water.

(l) If a manifold monitoring program is utilized describe the program and demonstrate equivalence to individual well monitoring.

(m) A corrective action plan must be submitted for all well(s) within the area of review as required in Section 7(4) of this administrative regulation.

(n) A demonstration of financial responsibility as required in Section 8(2) and a plugging and abandonment plan as required in Section 10 of this administrative regulation.

(o) The plan by the operator of mechanical integrity. Each well shall be tested for mechanical integrity using the method as described in Section 6(5).

(2) Application [~~1. All plats shall be submitted on a sheet eight and one-half (8 1/2) x fourteen (14) inches. This sheet may be on paper, tracing cloth, training paper or equivalent.~~

~~2. The names of all lessees and lessors contiguous to the tract on which the injection shall occur.~~

~~3. The Carter Coordinate Location and the elevation of the well site.~~

~~4. The geologic name and depth of the injection zone.~~

~~5. At least two (2) surface features, by bearing and distance from the proposed well site, which appear on the U.S.G.S. seven and one-half (7 1/2) minute topographic map of the area.~~

~~6. The name of said topographic map and county.~~

~~7. The location of all known freshwater wells within the area of review.~~

~~8. The location and completion and/or plugging record of all wells, whether producing or plugged, within the area of review.~~

~~(d) Information showing that injection will not initiate fractures through the overlying strata shall include, but not be limited to the following:~~

~~1. A fluid injection rate of 1,000 barrels or less for a period of twenty-four (24) hours, or an equivalent rate for any fraction of twenty-four (24) hours, must maintain a minimum separation thickness of 200 feet between the lowest base of known fresh water, and the top of the proposed injection interval per well.~~

~~2. A fluid injection rate of more than 1,000 barrels for a period of twenty-four (24) hours, or an equivalent rate for any fraction of twenty-four (24) hours, must maintain a minimum separation thickness of 500 feet between the lowest base of known fresh water, and the top of the proposed injection interval per well.~~

~~3. The director may allow lesser thickness than required in subparagraphs 1 and 2 of this paragraph if the applicant furnishes certified evidence to the director that lesser thickness will not initiate fractures into the USDW.~~

~~(e) The Well Log and Completion Report and a copy of all geophysical logs.~~

~~(f) A certificate that shall include the following:~~

~~1. The identification of the well by permit number, operator's name, lease name, well number, Carter Coordinate Location, elevation and county.~~

~~2. The entire casing and cementing record, any packers and other special downhole equipment, and cement bond logs, if run.~~

~~3. The anticipated maximum bottom hole pressure (psi) and volume in barrels or cubic feet per day.~~

~~4. The identification of the injection zone by geological name and depth (top and bottom of zone), the number of perforations, if applicable, or the interval of open hole.~~

~~5. The certification by the operator of mechanical integrity. Each well shall be tested for mechanical integrity using method(s) approved by the director prior to being placed in service and the test results shall be certified to the director in writing. The director may require less information from the applicant where the information is readily available, or from up-to-date instate files, or where, based upon demonstrable knowledge available to the director about the proposed operation, the director proposes to permit the operation without requiring corrective action or alternatives to it.~~

~~(2) Applications~~] for permit shall be signed by the owner or operator of the injection well, including corporate officers, general partners, sole proprietors, or other persons authorized to execute such documents on behalf of the applicant.

(3) With respect to an application for a Class II well an applicant must serve a written notification describing the proposed well personally or by certified mail on each of the following persons, if the described property is located within one-quarter (1/4) mile of the proposed well:

(a) The owner or operator of each well for oil and gas purposes, including a well having temporary abandonment status

under this regulation or not yet in production.

(b) The permittee of an underground mine permitted under KRS Chapter 350.

(c) Each owner of rights to surface or subsurface property that the well penetrates.

(4) The notification required under this subsection shall specify that a person who wishes to object to issuance of the permit may, within fifteen (15) days of receipt of the notification, submit written comments or request a hearing. The notification shall include the address to which written comments or the hearing request must be forwarded and where additional information may be obtained. In addition to the notification required under this subsection, the applicant shall cause a notice of a permit application to be placed in a newspaper of general circulation in the county where the proposed well is located. Individual and publication notices shall include the name and address of the applicant, the location of the proposed well, the geological name and depth of the injection zone, the maximum injection pressure, and the maximum rate of barrels each day. The notice shall specify that a person who wishes to object to issuance of the permit may, within fifteen (15) days of publication of the notification, submit written comments or request a hearing. The notification shall include the address to which the written comments or hearing requests must be forwarded, how a person may receive written notice of the proceedings, and where additional information concerning the proposed permit can be obtained. Proof of service of the notification required in this subsection must be delivered to the division before a permit for a Class II well can be issued.

(4) The owner or operator shall verbally notify [~~An applicant for permit under this section shall provide public notice of the permit application by causing a notice of the application to be posted in the county courthouse of the county in which the Class II well is proposed to be located. Such notice shall describe the proposed action, and advise interested parties that additional information may be obtained from the director, that a public hearing may be requested, and that comments on the proposed action and requests for public hearing must be submitted to the director within fifteen (15) days of posting of the notice. The applicant shall provide a copy of the public notice to the director accompanied by an affidavit as to the manner in which public notice of the application was provided. If a significant degree of public interest is indicated, the director shall conduct a public hearing on the application. At the conclusion of the public comment period (including any public hearing) the director shall take final action on the permit application.~~

~~(4) The permit to inject shall be issued before injection is allowed.~~

~~(5) The permittee shall notify verbally~~] field inspectors five (5) days before all mechanical integrity tests are performed. A written notice shall be given to the division fifteen (15) [~~director five (5)~~] days before said tests are performed as required in Section 6(7) of this administrative regulation.

(5)[~~(6)~~] The permit to inject into all Class II injection wells shall remain valid for the life of the well or project. However, the permit may be terminated if the well or project is in violation of this administrative regulation and applicable provisions of KRS Chapter 353 [~~the law~~]. The owner or [~~well~~] operator must comply with the requirements of all applicable administrative regulations.

Section 12. Completion and Monitoring Reports. (1) The owner or operator shall upon completion of construction of a Class II well file with the division a "Certificate of Completion for an Injection Well", Form ED-23, incorporated herein by reference within ninety (90) days of final construction.

(2) The owner or operator shall file an annual report of monthly monitoring of injection fluid volumes, injection pressure, and casing annulus pressure on Form ED-18, incorporated herein by reference, on the 28th day of January for the previous 12 months. The owner or operator shall retain all such records on file for a period of five (5) years. The owner or operator of liquid hydrocarbon storage or enhanced recovery wells may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if such facilities consist of more than one (1) injection well, operate with a common manifold, and provided the owner or operator demonstrates to the director that manifold monitoring is equivalent to individual monitoring.

(3)[~~(7)~~] The owner or operator permittee of all Class II injection wells shall notify the director in writing within thirty (30) days of the termination of operations at which time the permit to inject shall expire.

Section 13. Workover of Class II Wells. The owner or operator must notify the division within ninety (90) days of any well workover, logging, or testing that may reveal downhole conditions. The owner or operator shall submit a "Well Rework Report", Form ED-4, documenting the activity within thirty (30) days following the completion of the rework. Should the packer unseat during the workover, a mechanical integrity test shall be conducted under the provisions of Section 6 of this administrative regulation. No injection is allowed until an approved mechanical integrity test has been performed.

Section 14. Procedures for Public Participation in Enforcement Actions. Upon receiving a complaint from the public, interested parties or others, the division shall:

(1) Investigate and provide written response to all citizens complaints submitted in regards to any concerns for endangering an underground source of drinking water.

(2) Not oppose intervention by any citizen when permissive intervention is authorized pursuant to KRS 353.180(3).

(3) Publish notice of and provide at least thirty (30) days for public comment on any proposed settlement of a division enforcement action beyond the forfeiture of a bond for a Class II well.

Section 15. Penalties. Any owner or operator in noncompliance with the requirements of this administrative regulation is subject to the penalties established in KRS 353.992.

Section 16. Primacy. The provisions of this administrative regulation shall become effective upon the date of primacy. On or after said date, Class II wells shall be subject to the requirements of this administrative regulation and shall be exempt from Section 4, 5, and 6 of 805 KAR 1:020.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Well Rework Report," Form ED-4, August 2007; and

(b) "Class II Well Permit Application for Underground Injection Control," Form ED-14 August 2007; and

(c) "Annual Disposal or Injection Well Monitoring Report," Form ED-18, August 2007; and

(d) "Certification of Mechanical Integrity," Form ED-22, August 2007; and

(e) "Certificate of Completion for an Injection Well," Form ED-23, October 2007; and

(f) "Casing and Cementing Plan for UIC Wells," Form ED-25, October 2007; and.

(g) "Well Transfer for UIC Wells," Form ED-26, October 2007; and

(h) "Affidavit to Time and Manner of Plugging and Filling Well," Form ED-38, October 2007.

(2) These forms may be inspected, copied, and obtained, subject to applicable copyright law, at the Division of Oil and Gas Conservation, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [~~Section 9. Date of Applicability. The provisions of this administrative regulation shall become applicable upon the date of primacy. On and after said date, Class II wells shall be subject to the requirements of this administrative regulation and shall be exempt from Sections 4, 5 and 6 of 805 KAR 1:020.~~]

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 10, 2007
FILED WITH LRC: October 11, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 27, 2007, at 1 p.m. (EDT) in Conference Room

D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by November 16, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2007. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays days prior to the hearing.

CONTACT PERSON: Richard Wahrer, Office of Technical and Administrative Support, Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, e-mail Richard.Wahrer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rick Bender

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions for the construction, implementation and injection of produced fluids, including gases, into underground formations for the enhanced recovery of oil and gas or for the disposal of fluids that are produced during oil and gas production operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement a state program to regulate underground injection of fluids in a manner that will protect ground water and promote the maximum recovery of oil and gas within the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.592 authorizes the department to develop and promulgate a regulatory program for the purpose of accepting primary responsibility for administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Pub.L. 93-523 as amended). This amended administrative regulation addresses the elements listed in KRS 353.592(1-5) and fulfills the intent of developing an effective regulatory Underground Injection Control Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Compliance with the requirements of this administrative regulation will ensure the protection of underground sources of drinking water.

(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: Amended portions of this administrative regulation will address all aspects of the elements listed in the authorizing statutes enabling the implementation of an effective program that would allow state assumption of the Underground Injection Control Program from the Environmental Protection Agency.

(b) The necessity of the amendment to this administrative regulation: The existing administrative regulation was found to be deficient by the Environmental Protection Agency when the Division of Oil and Gas made an application for state primacy in 1984. The changes that are proposed in the amended administrative regulation will correct these deficiencies and fulfill the requirements for an effective state program pursuant to Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended).

(c) How the amendment conforms to the content of the authorizing statutes: See response in question 1(c) of this Regulatory Impact Analysis. Each section of the authorizing statute under KRS 353.592 (1)-(5) is addressed in the amended administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes made in the amended administrative regulation provide clarity and better define the requirements to construct, implement and inject into a Class II well. The previous administrative regulation lacked requirements for financial responsibility, transition of existing wells authorized by the Environmental Protection Agency and notice requirements necessary for an effective program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities will be oil and gas operators, with the number affected dependent on the number of companies which will develop new installation of Class II underground injection wells following the implementation of this amended administrative regulation. The Department for Natural Resources, Division of Oil & Gas Conservation will be charged with compliance oversight.

(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: Companies will be required to apply for injection well permits with the state rather than to the Environmental Protection Agency. This will greatly benefit the oil and gas industry in the state since they are currently required to permit the wells to be drilled by the state but also are subject to permitting and additional bonding requirements with the Environmental Protection Agency Upon receiving primacy of the Class II program, the Division of Oil & Gas Conservation will permit the wells for injection and inspect them to ensure they are in compliance with the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed amendments to this administrative regulation will not result in increased costs to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With the assumption of the Underground Injection Program, the oil and gas operators will be required to post an individual well bond per the state schedule. State bonding costs are anticipated to be less than existing Environmental Protection Agency bonds. The inspection and enforcement personnel of the Division of Oil and Gas Conservation will be more responsive and sensitive to the regional needs of the oil and gas industry of the Commonwealth.

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

(a) Initially: $175,000 for start-up costs for vehicles, computers, other associated equipment and funding of 3 additional personnel.

(b) On a continuing basis: $175,000 annually for the administration of the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Upon receiving primacy for the Underground Injection Control Program, the division will be eligible for an annual grant from the Environmental Protection Agency for the cost of administration of the program.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amended administrative regulation does not establish any fees for permits for Class II underground injection control wells.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirement to permit injection wells must apply equally to all oil and gas production operations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state and local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas Conservation of the Department for Natural Resources.

3. Identify each state and federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. As outlined in KRS 353 592 the department is authorized to develop and promulgate a regulatory program for the purpose of accepting primary responsibility for administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Pub.L. 93-523 as amended). This amended administrative regulation addresses and fulfills the intent of developing an effective as, but no more stringent than, regulatory Underground Injection Control Program currently under the jurisdiction of the Environmental Protection Agency.

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? Revenue will not be generated from the implementation of this amended administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unchanged from the first year.

(c) How much will it cost to administer this program for the first year? The costs associated with attaining primacy of the Underground Injection Control Program are estimated to be $175,000. The Commonwealth of Kentucky will be eligible for an annual grant from the Environmental Protection Agency for the cost of administration of this Program.

(d) How much will it cost to administer this program for subsequent years? Costs associated with administering the Underground Injection Control Program are estimated to be $175,000 per year. The Commonwealth of Kentucky will be eligible for an annual grant from the Environmental Protection Agency for the cost of administration of this Program.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amendment)

810 KAR 1:015. Claiming races.

RELATES TO: KRS 230.215(2), [~~230.225(1),~~] 230.260(3)

STATUTORY AUTHORITY: KRS 230.215(2), [~~230.225(1),~~] 230.260(3)[~~, (6)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), and [~~230.225(1),~~] 230.260(3) authorize the Authority to [~~requires that the commission~~] promulgate administrative regulations prescribing the conditions governing horse racing. This administrative regulation prescribes the conditions for the conduct of claiming races.

Section 1. (1) In a claiming race [~~races~~] a horse shall be subject to claim for its entered price by a licensed owner in good standing, or by the holder of a certificate of eligibility to claim. The procedure for obtaining a certificate of eligibility to claim shall be as follows:

(a) An applicant shall, five (5) [~~fifteen (15)~~] days prior to entering a claim, submit:

1. An application for an owner's [~~owners' original~~] license;

2. A financial statement;

3. Written consent permitting the Authority to conduct a criminal background check [~~A finger print card~~],

4. The name of a licensed trainer, or person eligible to be licensed as a trainer, who will assume care and responsibility for the horse claimed, and

5. The requisite fee for an owner's [~~owners~~] license.

(b) The certificate of eligibility shall be valid for the remainder of the calendar year.

(2)(a) A claim may be made by an authorized agent.

(b) An agent may claim only for the account of those for whom the agent [~~he~~] is licensed as agent.

(c) The name of the authorized agent[~~,~~] and the name of the owner for whom the claim is being made shall appear on the claim slip.

(3)(a) A person shall not claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account.

(b) A claimed horse shall not remain in the same stable or under the care or management of the owner or trainer from whom it is claimed.

(4)(a) A person shall not claim more than three (3) horses from a race.

(b) Multiple claims submitted by the same owner, authorized agent [~~and/~~]or trainer for a single horse shall not be permitted and shall be void.

(5)(a) A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed.

(b) The day following the day the horse is claimed shall count as [~~be~~] the first day.[~~;~~]

(c) The claimed horse shall be entitled to enter whenever necessary to permit it to start on the 31st calendar day following the claim.

(d) This subsection shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper, or to [~~and~~] starter allowance races.

(6)(a) A horse claimed in a claiming race shall not be sold or transferred, wholly or in part, within thirty (30) days after the day it was claimed, except in another claiming race.

(b) A claimed horse shall not race at a horse race meeting in another racing jurisdiction outside Kentucky until the earlier of:

(a) Sixty (60) days from the date on which the horse was claimed; or

(b) Thirty (30) days from the end of the meet. With the permission of the stewards, a claimed horse may [~~Unless the stewards grant permission for a claimed horse to~~] enter and start at an overlapping or conflicting meeting in Kentucky, if the stewards determine that permitting the horse to do so will not be detrimental to the meeting from which the horse is [~~a horse shall not race elsewhere until the close of entries of the meeting at which it was~~] claimed.

(7)(a) A claim shall be:

1. Made on the form [~~Commission~~] "Claim Blank";

2. Sealed in an envelope supplied by the Authority [~~Commission~~]; and

3. Deposited in the association's claim box.

(b) The "Claim Blank" form and envelope shall be filled out completely and accurately.

(8)(a) Claims shall be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made.

(b) Money or its equivalent shall not be put in the claim box.

(c) A claim shall be valid if the claimant at the time of filing the claim has a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall:

(a) Open the claim envelopes for each race as soon as the horses leave the paddock en route to the post; and

(b) Check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association; and

(c) Verify that the claimant has a valid owner's license or certificate of eligibility to claim.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11)(a) After the race has been run a horse that has been claimed shall be delivered to the claimant.

(b) The claimant shall present written authorization for the claim from the racing secretary.

(c) After written authorization has been presented, horses that are sent to the detention area for post race testing shall be delivered.

(d) Other horses shall be delivered in the paddock.

(e) A person shall not refuse to deliver a horse claimed out of a claiming race to the person legally entitled to the horse.

(f) If the owner of a horse that has been claimed refuses to deliver the horse to the claimant, the horse shall be disqualified from further racing until delivery is made.

(12)(a) A claim shall be irrevocable.

(b) Title to a claimed horse shall be vested in the successful claimant from the time the horse is a starter,[;] and the funds transferred to the account of the previous owner. The transferred funds shall be[, with said funds] immediately available for future claiming transactions.

(c) The successful claimant shall become the owner of the horse whether the horse [it] is:

1. Alive or dead;

2. Sound or unsound; or

3. Injured during the race, or after it.

(d) A claimed horse shall run in the interest of and for the account of the owner from whom it is claimed.

(13)(a) A person shall not offer to:

1. Enter, or enter into an agreement to claim, or not to claim; or

2. Prevent [Attempt], or attempt to prevent, another person from claiming any horse in a claiming race.

(b) A person shall not attempt by intimidation to prevent anyone from running a horse in a claiming race.

(c) An owner or trainer shall not make an agreement with another owner or trainer for the protection of each other's horse in a claiming race.

(14)(a) A claim that does not comply with the provisions of this administrative regulation shall be void.

(b) The stewards shall be the judges of the validity of a claim.

(15) A person holding a lien of any kind against a horse entered in a claiming race shall record the lien with the racing secretary or horseman's bookkeeper at least one (1) hour [thirty (30) minutes] before post time for that race. If no lien is [none is so] recorded, it shall be presumed that no lien [none] exists.

(16) The engagements of a claimed horse pass automatically with the horse to the claimant.

(17) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Claim Blank[(Rev 96)]"; and

(b) Claim Blank envelope.

(2) This material may be inspected at Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM STREET, Chairman
LAVOYED HUDGINS, Deputy Commissioner
For TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 15, 2007
FILED WITH LRC: October 15, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007, at 11 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by November 20th, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30 , 2007. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation amends 810 KAR 1:015, which governs claiming races The amendment makes several substantive changes to the regulation outlined below, and also amends the language of the regulation to conform to KRS Chapter 13B drafting requirements.

(b) The necessity of this administrative regulation: The amendments are necessary to update to industry standards the thoroughbred claiming regulation and to strengthen the horse racing industry in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred claiming races pursuant to KRS 230.215(2) and 230.260(3), which authorize the Authority to promulgate administrative regulations governing the conditions of horse racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the conditions of claiming races, one of several types of races run at Kentucky race tracks. A claiming race is a race in which the horses running in the race can be purchased ("claimed") from the original owner by a buyer willing to pay a predetermined price set forth in the written conditions of the race.

(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 alters the language of the regulation to conform to KRS Chapter 13B drafting requirements. More importantly, the amendment makes the following substantive changes to the regulation:

1. Currently, if an owner who desires to participate in a claiming race does not have a Kentucky license, that person may nevertheless participate in the claiming race by obtaining a certificate of eligibility to claim. To apply for a certificate, the person must submit an application for a license, the fee for the license, a financial statement, and the name of the trainer. In the past, the regulation required submission of a fingerprint card, but this requirement is being eliminated; instead the applicant need only provide written consent permitting the Authority to conduct a criminal background check. Also, whereas in the past all of the above documentation had to be provided 15 days in advance of the entry of the claim (usually the day of the race), the regulation is being amended to require it only 5 days in advance. This is less burdensome to the applicant, and modern technology allows the Authority and the race tracks to process this information more quickly.

2. The most significant change is the extension of the "jail time" provision.

Presently, this regulation prohibits a claimed horse from racing at another track until the close of entries of the meeting at which it was claimed. Entries typically close in the last few days of the meet. (As an exception to the prohibition against racing at another track, the regulation allows the stewards to grant permission for the horse to enter and start at an overlapping or conflicting meeting within Kentucky, but this exception is rarely granted).

The problem facing the horse racing industry is that claimants from out of state frequently appear during the last few days of a Kentucky meet, claim numerous horses, and then take them out of state to run at other tracks. Kentucky suffers from the loss of these horses, which are no longer available to fill races and increase handle and purses

Many states which have experienced similar problems have enacted more restrictive "jail time" rules, which prohibit a horse claimed at an in-state meet from racing out of state for 30 or 60 days from the end of the meet. This serves as an incentive for the claimant to continue to race the horse at in-state tracks, at least for the required period of time. In-state tracks therefore benefit from the participation of the horses and enhanced field sizes, and the gambling public have more horses upon which to wager. More money is also wagered upon the races as a whole, which can result in larger purses

The Authority therefore desires to amend the regulation to read as follows: "A claimed horse shall not race at a horse race meeting in another jurisdiction until the earlier of (a) sixty (60) days from the date on which the horse was claimed, or (b) thirty (30) days from the end of the meet. With the permission of the stewards, a claimed horse may enter and start at an overlapping or conflicting meeting in Kentucky."

This rule will effectively impose a 30 day restriction on racing horses in another state after the end of the meet, encouraging the horses to race in Kentucky for that period of time. This restriction is eased somewhat in the case of horses that are claimed early in a long meeting lasting several months - for example, from January 1st through April 5th, the length of the 2007 Winter/Spring meet at Turfway. In these cases, the rule will allow horses claimed early in the meet to race elsewhere after 60 days, if the 60 days elapse before the 30 day period after the end of the meet. The Authority believes that this amendment will sufficiently protect Kentucky claiming horses without placing an undue burden upon owners and trainers, who will be prohibited from racing their horses outside of Kentucky during the time periods set forth in the regulation.

3. The regulation is being amended to specifically require the stewards to determine whether the claimant has a valid owner's license. The stewards usually do this as a matter of routine, but the regulation now makes it explicit.

4. The regulation is being amended to require a person holding a lien against a horse to record the lien in the racing secretary's office at least one hour before the race, rather than 30 minutes before as the regulation currently states. This will give the racing secretary more time to investigate the validity of the lien and the ownership issues involved. Since horses can change ownership as a result of a claim, it is very important to ensure that the person who enters a horse into a race has free and clear title to the horse, unclouded by liens

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow the regulation to reflect current realities and to strengthen the horse racing industry in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment alters some of the details of the rules of claiming races. KRS 230.215(2) and KRS 230.260(3) grant the Authority to the power to promulgate administrative regulations governing the conditions of horse racing, including claiming races.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the language of this administrative regulation, and will alter the rules of claiming races in some particulars, as described in 2(a) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Among the individuals affected by this administrative regulation are the owners and trainers of horses that run in claiming races. As of July 10, 2007, there are 3,468 owners, 706 owner/trainers, and 164 trainers in Kentucky. Kentucky race tracks, the horse industry and the gambling public as a whole will benefit due to the increased number of horses running in Kentucky, and the increased amount of money wagered and purses offered, as a result of the time restrictions on claimed horses racing in other states.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be required to comply with the rule changes outlined in (2)(a) above, but no new specific compliance activities are required. Horse owners and trainers will be restricted from racing claimed horses outside the state of Kentucky for certain time periods, but the horse industry as a whole will gain from the restriction due to increased field sizes, increased handle, and increased purses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No compliance costs will be imposed upon the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The horse racing industry and the race tracks will benefit from increased field sizes, increased handle, and increased purses, as described in 2(a) above, due to more claimed horses running in Kentucky.

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

(a) Initially: No additional cost. The administrative regulation merely changes some of the rules of claiming races.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are required by this administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not).

Tiering is not applied to this administrative regulation because the regulation simply governs the rules of claiming races. All participants in these races compete on an equal basis.

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 Horse Racing Authority will be impacted by this administrative regulation, in that it administers the rules of horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. No federal statutes or regulations are involved

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. N/A

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.

RELATES TO: KRS 198B.400, 198B.470, 198B.480, 198B.500, 198B.510, 198B.540

STATUTORY AUTHORITY: KRS 198B.060(18), 198B.490

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 requires the executive director 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 sections 10, 12, and 19 in their entirety with the exception of rules 2.2.4.3, 2.19.2, 2.19.3.2(A)(3), 2.26.2.33, 2.27.3.2.6, 2.27.3.3.7, 3.17.3, 3.26.10, 6.1.3.3.9, and 8.6.5.8 for existing elevators and escalators, or the edition of A17.1 Safety Code in its entirety that the elevator was originally permitted under;

(b) "Inspectors' Manual for Hydraulic Elevators", ASME A17.2.2-1997;

(c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;

(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;

(e) "Guide for Emergency Personnel", ASME A17.4-1999;

(f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996,

(g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and

(h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003 in its entirety with the exception of rules 5.7.1 and 10.1.2.1;[.]

(i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1 21-05;

(j) "Automated People Mover Standards-Part 2", ASE 21-98; and

(k) "Automated People Mover Standards-Part 3", ASCE 21-00.

(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) The annual inspection fees for the issuance of a certificate of operation shall be as established in this subsection.

(a) The wheelchair and stair chair lift inspection fee shall be seventy-five (75) dollars.

(b) The dumbwaiter inspection fee, if under contract to inspect, shall be eighty-five (85) dollars.

(c) The limited-use limited-access (Lula) elevator inspection fee shall be $100.

(d) The escalator and moving walk inspection fee shall be $120.

(e) The hydraulic elevator inspection fee shall be $100.

(f) Inspection of traction elevators. The fee for:

1. The first ten (10) floors shall be $100; and

2. Each additional ten (10) floors, or portion thereof, is an additional ten (10) dollars.

(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 A17.1-2004 Sections 10, 12, and 19;

(b) Inspector's Manual for Hydraulic Elevators, ASME A17.2.2-1997;

(c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;

(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;

(e) "Guide for Emergency Personnel", ASME A17.4-1999;

(f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;

(g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and

(h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003.

(i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1 21-05;

(j) "Automated People Mover Standards-Part 2", ASE 21-98; and

(k) "Automated People Mover Standards-Part 3", ASCE 21-00.

(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.

(3) This material may also be obtained from the American Society of Mechanical Engineers, 1901 Alexander Bell Drive, Reston, Virginia 20191-4400. [~~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: October 10, 2007
FILED WITH LRC. October 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007, at 10:00, 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 November 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 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 November 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 updated codes.

(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 the Automated People Mover Standards Parts 1 through 3.

(b) The necessity of the amendment to this regulation: It will add the additional standards and give the inspectors the updated codes for inspection of Automated People Movers.

(c) How the amendment conforms to the content of the authorizing statute: Give the inspectors the updated standards regarding the Automated People Mover Standards.

(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 automated people movers 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 other than having Automated People Movers 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 these new standards will result in safer operation of automated people movers that will benefit both the 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 orindirectly increases any fees: This amendment does not increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied as it relates to inspection of automated people movers. All automated people movers will be inspected annually and these standards will be used by the inspectors

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 and applicable local government inspectors will utilize these codes as part of the inspection.

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

(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 (+/-): Minimal expenditures due to cost of paper

Other Explanation: No additional funds are expected to be generated or spent by adopting updated codes to inspect these devices.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 198B.040(7), 198B.050, 198B.060, 198B.070

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorizes a local government to petition the executive director [~~commissioner~~] to request additional plan review and inspection functions to be allocated to that local government. This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

Section 1. Uniform Criteria for Granting Expanded Jurisdiction. To petition for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.

(1) A local government shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the office [~~department~~] together with the supporting documentation required by this administrative regulation.

(2) Certified inspector required. The local government shall employ or contract with a person, firm, or company to perform the plans and specifications inspection or building inspection functions granted to the local government.

(a) The local government shall employ or contract with a certified electrical inspector and other code enforcement personnel and support staff necessary to enforce the Kentucky Building Code within the expanded jurisdiction.

(b) The local government shall have at least one (1) person who is a certified plans and specifications inspector (Level III), pursuant to 815 KAR 7:070 reviewing the plans and specifications and performing building inspections. The designated Level III inspector shall have a minimum of three (3) years experience in that capacity.

(3) Additional personnel. A complete list of code enforcement personnel, including the designated plans and specifications inspector and certified electrical inspector, that shall be employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted. The list of personnel shall include the name, job title and certification status of each individual.

(4) Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity with the expanded jurisdiction.

(5) Contracts with other local governments. If a person, firm, or company has been contracted to provide plans and specifications inspection functions and the person, firm, or company provides inspection services for other local governments, the documentation of permit and fee activity required by subsection (4) of this section

shall be provided for each of the other local governments.

(6) Official contact person. The local government shall identify:

(a) The name and title of the chief building code official;

(b) The name of the department,

(c) The official mailing address;

(d) The phone number;

(e) The fax number; and

(f) The e-mail address, if applicable.

(7) Inclusions and exclusions.

(a) A local government's petition for expanded jurisdiction shall include:

1. A complete list of each building occupancy classification and size for which expanded jurisdiction is requested;

2. A complete list of each building occupancy classification and size for which expanded jurisdiction is not requested; and

3. A copy of the local ordinance requiring single family dwelling plan review and inspection or a statement to the effect that the local government elects not to regulate them.

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing by the local government and the office [~~department~~].

(8) State jurisdiction. The office [~~department~~] shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings which are:

(a) Institutional buildings;

(b) Educational buildings or other facilities required to be licensed by the Cabinet for Health and Family Services [~~Families and Children or Cabinet for Health Services~~], including day care centers, hospitals, nursing homes or other similar facilities;

(c) State-owned or leased buildings and facilities;

(d) High-hazard occupancies, unless specifically agreed in writing by the local government and the office [~~department~~]; and

(e) Industrialized building systems (including modular homes) except for site placement and assembly of modular homes which may be permitted locally upon notification from the department for each instance.

Section 2. Procedures for Maintaining Expanded Jurisdiction. (1) The department shall monitor the program of local governments that have been granted additional responsibility. If the local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, any terms of their agreement or KRS Chapter 198B, the office [~~department~~] may cancel the agreement, rescind the expanded jurisdiction and preempt the local program in its entirety, upon approval of the board.

(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless canceled:

(a) By agreement of the parties in writing; or

(b) Pursuant to subsection (1) of this section.

(3) The local government shall notify the office, [~~department,~~] within thirty (30) days of any changes in personnel or fees during the contract period.

(4) Before the expiration of the three (3) year agreement for expanded jurisdiction, the office [~~department~~] shall reevaluate the building code enforcement program of the local government and make a recommendation to the board regarding continuation of the expanded jurisdiction and renewal of the agreement. Upon approval by [~~of~~] the board and the local government, the office [~~department~~] shall renew its agreement for another three (3) years.

Section 3. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the office [~~department~~], which shall:

(a) Identify the names of each member and their technical qualifications for being appointed to the appeals board; and

(b) Include the method for contacting the local appeals board.

(3) If there is not a local appeals board, all costs incurred in processing the appeal shall be charged to the local government for each appeal filed pursuant to KRS 198B.070(5).

Section 4. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection of the construction of one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 5. Local Government Fees Schedule. (1) The local fees authorized by KRS 198B.060(18), established for construction projects which continue under state jurisdiction, shall be adjusted to reflect that plan review or inspection functions will not be provided by the local government.

(2) Each local government's petition for expanded jurisdiction shall include a copy of the schedule of fees as adopted by the local legislative body.

Section 6. Incorporation by Reference. (1) Form BCE/EJ #1, Application for Local Expanded Jurisdiction, October, 2007, [~~October 2000~~], is incorporated by reference.

(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.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 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 November 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 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 November 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 L. Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

(b) The necessity of this administrative regulation: This administrative regulation establishes a uniform criteria for local governments to seek expanded jurisdiction as permitted by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the mechanism by which local governments may seek expanded jurisdiction as permitted by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

tratiave regulation assists in the administration of the statutes by establishing a uniform criteria to ensure that those local governments seeking expanded jurisdiction have adequate personnel to fulfill their responsibilities.

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

(a) How the amendment will change this existing administrative regulation: Amends the Form BCE/EJ #1, Application for Local Expanded Jurisdiction and changes "department" to "office".

(b) The necessity of the amendment to this regulation: This administrative regulation establishes a uniform criteria for local governments to seek expanded jurisdiction as permitted by statute.

(c) How the amendment conforms to the content of the authorizing statute: The administrative regulation sets forth the mechanism by which local governments may seek expanded jurisdiction as permitted by statute.

(d) How the amendment will assist in the effective administration of the statutes: This administratiave regulation assists in the administration of the statutes by establishing a uniform criteria to ensure that those local governments seeking expanded jurisdiction have adequate personnel to fulfill their responsibilities. The updated form provides additional information for the applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local governments that seek expanded jurisdiction.

(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: They will need to complete a new application if seeking expanded jurisdiction.

(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): None. The entities will benefit by having a clearer application form.

(d) 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: No impact other than completing a newer application form.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs should be incurred as a result of amending the application form.

(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 funds will be utilized. No new duties are being imposed.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional costs should be incurred as a result of amending the application form.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No additional costs should be incurred as a result of amending the application form.

(9) TIERING: Is tiering applied? Tiering is not applied. It is believed that all local governmetns undertaking expanded jurisdiction responsibilities should ensure an adequate level of competence and ability to do so.

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? Building code departments of local governments that seek expanded jurisdiction.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.060(5) allows local governments to seek expanded jurisidction.

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.

(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. This amendment does not increase revenue or result in increased cost to comply or to administer. It simply updates the application required to be submitted by local governments desiring expanded jurisdiction.

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)

815 KAR 7:120. Kentucky Building Code.

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" is defined by KRS 198B 010(9).

(4) "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.

(5) "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 as established in 815 KAR 10:060.

(6) "Industrialized building system" or "building system" is defined in KRS 198B 010(16).

(7) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(8) "Kentucky Residential Code" means the International Residential Code, 2006, as amended for application in Kentucky by 815 KAR 7:125.

(9) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10 060, which serve as the fire prevention

code for existing buildings as well as a supplement to this code.

(10) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(11) "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.

(12) "Office" is defined by KRS 198B 010(11)

(13) "Ordinary repair" is defined by KRS 198B.010(19).

(14) "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.

(15) "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.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units which are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 Kentucky Building Code, the International Building Code 2006, shall be the mandatory state building code for Kentucky for all buildings.

(b) 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.

(1) Fast track elective.

(a) 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.

(b) The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings

(a) The office's 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 factories, 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; or

(l) All other nonresidential, six and one-half (6 5) cents.

(4) Additions to existing buildings.

(a) 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.

(b) The minimum fee for review of plans under this subsection shall be $200.

(5) Change in use.

(a) 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.

(b) 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 subsections (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. An inspection of four (4) through 200 sprinklers shall be a fee of $150;

2. An inspection of 201 through 300 sprinklers shall be a fee of $175;

3 And inspection of 301 through 400 sprinklers shall be a fee of $210,

4. An inspection of 401 through 750 sprinklers shall be a fee of $250, and

5 An inspection of over 750 sprinklers shall be a fee of $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) The standpipe plan review fee shall be $150. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be $150; and

2. Over 200 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.a. Up to thirty-five (35) pounds of agent shall be $150; and

b. Over thirty-five (35) pounds shall be $150 plus six (6) cents per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than $150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be 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 automatic 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) The commercial range hood review fee shall be $150 per hood.

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be $150; and

2. Over thirty (30) pounds of agent shall be $150 plus twenty-

five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be $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 815 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:

(a) "International Building Code, 2006 ", First Edition, International Code Council, Inc.; and

(b) "2007 Kentucky Building Code", Second Printing, October, 2007.

(2) 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: October 10, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on November 27, 2007, at 9 a m., 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 November 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 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 November 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 198B.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 198B 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 198B.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.

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

(a) How the amendment will change this existing administrative regulation: The amendments will correct errors, include changes that were omitted, and change the material incorporated by reference by amending the 2007 version of the Kentucky Building Code. These changes include: Amends to Chapter 1, Section 106 3 4 3 to clarify the language regarding documents that are submitted by local authorities; Chapter 1, Section 115.1 deletes the language regarding contracts as OHBC and Cabinet for Health and Family Services no longer have a contract; Chapter 3, Section 310.1 to clarify the difference between the application of the code for use group I-1, which is a facility licensed through the Cabinet for Health and Family Services, and the use group R-4 which would be a non-licensed facility; Chapter 415.6.1 to carry forward the reference from the 2002 Kentucky Building Code; Chapter 4, Section 421.7.1 to reference the current standard, Chapter 5, Section 507.3 to delete NFPA 230 which has been incorporated into NFPA 13. Chapter 5; Section 509.9 creates a use group, Group R, to include a one-hour fire barrier or horizontal assembly for residential occupancies in a mixed use building; Chapter 9, Section 901.2 to reference the Kentucky Standards of Safety to eliminate the conflict between the Kentucky Standards of Safety and standards referenced in the IFC; Chapter 9, Section 903 2.1.3 restores language consistent with the International Building Code; Chapter 9, Section 903.2.1.4 restores language consistent with the International Building Code, Chapter 9, Section 910 2 complies with the previous edition of the Kentucky Building Code and renumbers those affected sections of the code; Chapter 17, deletes the reference to the SEAOK which is a guideline for sample forms and statements, Chapter 18, Section 1805.2 changes the depth of footings; Chapter 30, Section 3001.2 deletes ALIB153.1 as the elevator division does not inspect or review automotive lifts; and Chapter 35 amends the referenced codes standard to delete the reference to SEAOK..

(b) The necessity of the amendment to this administrative regulation: These changes will correct errors and omissions and 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.

How the amendment conforms to the content of the authorizing statutes:

(c) KRS 198B.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 2007 Kentucky Building Code which are being promulgated have been reviewed and approved by the Kentucky Board of Housing, Buildings and Construction pursuant to KRS 198B.050(4). How the amendment will assist in the effective administration of the statutes: These changes will carry forward those codes that were approved by the Board but were inadvertently omitted, correct errors and include the code changes approved by the board.

(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 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 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
Division of Fire Prevention
(Amendment)

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS 198B 060, 198B.062, 198B.070, 198B.080, 198B 090, 198B.110, 198B.120, 198B.130, 227B.300, 227.320, 227.330, 227.990

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 likely to unreasonably inhibit escape from danger 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 in accordance with the Kentucky Building Code which is incorporated by reference in 815 KAR 7:120 shall apply as provided in this subsection:

(a) Minimum or maximum standard.

1. 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 established in this administrative regulation or conflicting local ordinances.

2. Methods of construction that meet the requirements of the Kentucky Building Code shall not be deemed a distinct fire hazard.

(b) New construction.

1. 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.

2. 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)1. Pre-KBC buildings A building, facility, or portion thereof, which was constructed and approved prior to the effective dates of the Kentucky Building Code and this administrative regulation, shall be maintained as previously permitted.

2. 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 originally approved

(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 accepted or approved.

[~~(3) Inspection compliance. If the State Fire Marshal or local fire chief finds an existing building or facility to be in substantial compliance with this administrative regulation, the State Fire Marshal or local fire chief shall indicate so in writing.~~]

(3)[~~(4)~~] Hazardous materials, conditions and buildings.

(a) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall 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:

a. NFPA 402, Guide for Aircraft Rescue and Fire Fighting Operation, 2002 edition;

b. NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 edition;

c. NFPA 1031, Standard for Profession Qualifications for Fire Inspectors and Plan Examiner, 2003 edition;

d. NFPA 5000, Building Construction and Safety Code, 2006, edition;

e. Code reference 13.3 2.24 2, High Rise Buildings;

f. Code reference 13.3 2 6.1, Existing Assembly Occupancies; and

g. Code reference 13.6.1.2, Portable Extinguishers, if required, is modified to exclude the provisions 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;

2. NFPA 101, Life Safety Code, 2006 edition, and the NFPA referenced standards included in NFPA 101. The following codes and references shall be excluded from NFPA 101 for purposes of this administrative regulation:

a. NFPA 5000, Building Construction and Safety Code, 2006 edition; and

b. Code reference 13.3.5.1, Extinguishment Requirements;

3. 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, and 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; and

6. A condition, equipment, building, facility or portion thereof, or an alternative designed to comply with 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.

(4)[~~(5)~~] Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures which would exceed the requirements of the current edition of the Kentucky Building Code if the building were being newly constructed.

(5)[~~(6)~~] Maintenance of equipment.

(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in good working order.

(b) 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.

(6)[~~(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 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) A permit from a local government shall not be required unless it is required by local ordinance.

(b) An inspection or permit fee, 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 this administrative regulation and the standards incorporated herein or other codes or ordinances under state or local 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 the owner's duly authorized agent and upon each other person responsible for the deficiency.

(3) Failure to correct deficiency.

(a) Except if an appeal is in process pursuant to Section 6 of this administrative regulation, each deficiency shall be considered a violation.

(b) If a correction required in the notice of deficiency is not completed within the time specified, the appropriate legal proceedings to compel compliance shall be requested by the authority having jurisdiction

Section 6. Means of Appeal. (1) State Fire Marshal appeals.

(a) 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.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, other appropriate 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 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.

(a) Notification of Chief Elevator Inspector. The owner of the building shall immediately notify the Chief Elevator Inspector of every incident 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 Chief Elevator Inspector every facility for investigating the incident.

(b) Discontinued use of elevator. If an incident 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 an examination by the Chief Elevator Inspector is made and approval of the equipment for continued use has been granted.

(c) Removal of damaged parts. If an incident 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 Chief Elevator Inspector.

(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, or high-hazard 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. Places of religious worship [~~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 the applicable form contained in NFPA 25 or NFPA 72 and approved by the State Fire Marshal.

2. If any violations are noted, the appropriate forms shall be forwarded to the State Fire Marshal within ten (10) working days of the date of the inspection.

(c) Reporting exceptions.

1. A portable fire extinguisher or single station smoke detector inspection or test may be inspected and tested by the property owner and their agent.

2. 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 FPS 33-01 and for renewals on Form FPS 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

(ii) Pass the examination for alarm inspector administered by an approved examination provider;

b. Have had at least eighteen (18) months of experience, training, or instruction in fire alarm systems within the immediately prior five (5) year period;

c. 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;

d. Submit a passport size color photograph with the application or renewal form; and

e. (i) Have six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) Provide proof of current NICET certification.

2. Penalties. A person shall not:

a. Fail to conduct an inspection in accordance with the 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;

(b) NFPA 101, "Life Safety Code", 2006 edition;

(c) FPS 33-01, "Application for Fire Alarm Systems Certification", April 2006; and

(d) FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", April 2006.

(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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2007, at 10 a.m., 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 November 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 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 November 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: 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: The amendment will make clean-up changes to the regulation and add broader language to incorporate all places of religious worship rather than just churches.

(b) The necessity of the amendment to this regulation: The amendment is necessary to clarify the regulation and avoid confusion.

(c) How the amendment conforms to the content of the authorizing statute: The statute requires the adoption of a standard of safety and this change merely revises those standards for clarity.

(d) How the amendment will assist in the effective administration of the statutes: The changes will assist by avoiding confusion and reflecting more inclusive language.

(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, 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 comply with this administrative regulation or amendment: No impact.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities have no new obligations and benefit from clearer requirements.

(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 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: This amendment does not increase fees.

(9) TIERING: Is tiering applied? Tiering is not specifically used; however, certain reporting requirements relating to incidents are imposed for incidents involving certain buildings. It is believed reporting in such circumstances is necessary given the heightened level of public risk.

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 fire marshal and deputized fire departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.300.

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 charge from this amendment.

(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 change from this amendment. No charge from this amendment.

(c) How much will it cost to administer this program for the first year? No charge from this amendment.

(d) How much will it cost to administer this program for subsequent years? No charge from this amendment.

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 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, potable 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 by the Kentucky Plumbing Code Committee and approved by the Office and shall be allowed for installation in Kentucky.

(1) Flexible 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 conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(g) 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.

(3) Tubular traps with gasket in trap seal.

(4)(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 HiLo 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, Drainosaur 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.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) 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.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) 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.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) 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.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. 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.

3. Vitaclimate 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 installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - Instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

14. Anston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208, #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208, #183/240; #183/480 and #C183/480.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product is not approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater: Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B 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 gallon 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 water 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.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve.

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve.

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve.

31. Quietside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco 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) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal 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 C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(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 Aqua-Flo Corporation 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) REMCO 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.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.

(d) Rockford separators for grease, oil, hair and solids in various 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 intended 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 Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 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) Eljer 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 additional waste openings shall be located in the pump chamber above the top of the base chamber.

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.

(26) Exemplar Energy garden solar water heater.

(27) Preset systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Preset 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 Canplas Industries.

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-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 Increaser/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) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, 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 Plastics, Inc. for use on building sewers.

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, 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) Fernco 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 Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR 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)(a) 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)(a) 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) HubSett In Line Test Coupling· PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems.

(44) Viega/Ridgid 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 Ecosystems Inc. to be used as a prefiltration 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 CIPI 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: basepump. 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) Perma-Liner Industries, Inc, Lateral Lining System.

(a) This system is approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations.

(b) Interior applications shall be videoed 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 videoed 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 videoed 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 videoed 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.

(58) Nuflow Technologies Inc., Nuflow System.

(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 videoed 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 videoed 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) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations.

(60) WATACO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow.

(61) J.R. Smith MFG CO. THE BOSS TEE Series 4505 cleanout tee.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 10, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2007, at 9 a.m., 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 November 15, 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 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 November 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

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 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 products 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.

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 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 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 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO. KRS 318 010, 318.020, 318 040, 318.050, 318.054

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(2)

NECESSITY, FUNCTION, AND CONFORMITY. KRS 318.040(1)(d) requires an applicant for a master or journeyman plumber's license to possess the qualifications established in KRS 318.040 and other qualifications prescribed by the executive directors. KRS 318.040(2) and (3) require an applicant to successfully complete an examination prescribed by the office. KRS 318 050 requires the office to establish reasonable application fees for licensure as a master or journeyman plumber KRS 318.054(2) requires the office to establish reasonable renewal fees for master or journeyman plumbers. This administrative regulation establishes the application and examination requirements and the application and renewal fees.

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the Office of Housing, Buildings and Construction on:

(a) Form PLB-1, Application for License as a Master Plumber; or

(b) Form PLB-2, Application for License as a Journeyman Plumber.

(2) The application shall be:

(a) Properly signed and notarized;

(b) Accompanied by an examination fee of:

1. $150 to take the master plumber's examination, or

2. Fifty (50) dollars to take the journeyman plumber's examination; and

(c) Include a photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years of submittal.

(3) The application fee shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

(4) After passing the examination, an applicant for a master plumber's license shall remit a license fee of $250.

(5) After passing the examination, an applicant for a journeyman's license shall remit a license fee of sixty (60) dollars.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August and November of each year. A special examination may be conducted at other times as the Office of Housing, Buildings and Construction directs

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to each person who has an application on file

(3) Materials required for journeyman plumbers' examinations. An applicant for a journeyman plumber's license shall furnish the materials required for the practical examination, which are specified in the List of Required Examination Materials.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination than the journeyman's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be:

(a) $250 for a master plumber; and

(b) Sixty (60) dollars for a journeyman plumber.

(2) Continuing education. The continuing education requirements set forth in 815 KAR 20.032 shall be met

(3)[~~(2)~~] Inactive master renewal.

(a) To place the master plumber's license in inactive status, a master plumber shall pay an inactive fee of $125.

(b) An inactive master plumber shall not secure a plumbing permit, advertise, or represent himself as a qualified master plumber.

(c) To reactivate a master plumber license, the inactive master plumber shall pay an additional $125 and comply with the continuing education requirements set forth in 815 KAR 20 032.

(4)[~~(3)~~] Remittance of renewal fees. A renewal fee shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4 Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the following requirements to become licensed as a master plumber:

(1)(a) An applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application; and

2. Been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(b) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(2) An applicant shall successfully complete the examination developed and administered by the State Plumbing Examining Committee The examination shall be designed to demonstrate that the applicant:

(a) Understands KRS Chapter 318 and 815 KAR Chapter 20;

(b) Is capable of the design of a plumbing system; and

(c) Understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system.

(3) The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping.

(4) The passing grade for the total examination for a master plumber shall be eighty (80) percent, with a minimum of seventy-five (75) percent obtained for each portion of the examination established in subsection (3) (a) and (b) of this section.

Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the following requirements to become licensed as a journeyman plumber:

(1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.

(a) Proof of this requirement shall be satisfied by submission of:

1. A W-2 form;

2. An affidavit of a Kentucky licensed master plumber: or

3. A plumbing license issued by another state

(b) Completion of a two (2) year plumbing course shall be considered the equivalent of one (1) year of experience.

(2) An applicant shall successfully complete the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include.

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20,

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required

for oversized piping and for undersized piping; and

(c) Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as properly installing a no hub cast-iron project [~~caulking a cast iron soil pipe spigot into a cast iron hub~~] and soldering copper solder connections.

(3) The passing grade for the total examination for a journeyman plumber shall be seventy-five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination established in subsection (2)(a), (b) and (c) of this section.

Section 6. A master plumber or journeyman plumber shall notify the office of the name of the plumber's business and its address, employer and his address and each time a change of employment is made.

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

(a) Form PLB-1, "Application for License as a Master Plumber",
October, 2007; and [~~May 2006,~~]

(b) Form PLB-2, "Application for License as a Journeyman Plumber", October 2007 [~~May 2006; and~~

~~(c) "List of Required Examination Materials", May 2006.~~]

(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: October 10, 2077
FILED WITH LRC: October 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2007, at 9 a.m , 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 November 15, 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 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 November 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 L. Reichert

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation established the application and examination requirements and the application and renewal fees.

(b) The necessity of this administrative regulation: Will require journeyman plumber applicants to demonstrate the ability to properly install a no-hub cast-iron project This project represents the prevailing practice within the industry. This regulation also mandates continuing education which will ensure that Kentucky plumbers are utilizing the most modern and effective plumbing methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.060 allows the Office of Housing, Buildings and Construction to specify standards and qualifications for licensure as a plumber.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Will change the practical section of the examination for becoming a licensed journeyman plumber to reflect the prevailing industry methods. Also adds a continuing education requirement which will ensure that Kentucky plumbers are utilizing the most modern and effective plumbing methods.

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

(a) How the amendment will change this existing administrative regulation This amendment adds a section to require that journeyman plumber applicants demonstrate the ability to properly install a no-hub cast-iron project as part of the examination, and licensed plumbers will be required to attend continuing education courses.

(b) The necessity of the amendment to this regulation: KRS 318.040 establishes an examination and licensing process overseen by the executive director, and this amendment ensures applicants for a Kentucky plumbing license are proficient in the prevailing methods and technologies of the plumbing industry. The continuing education requirement ensures that Kentucky plumbers will stay abreast of changes in technology and methods within the plumbing industry

(c) How the amendment conforms to the content of the authorizing statute: KRS 318.040 establishes an examination and licensing process overseen by the executive director. The practical examination and the continuing education requirements are an integral part of the examination and licensing process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures applicants for a Kentucky plumbing license are proficient in the prevailing methods and technologies of the plumbing industry. The continuing education requirement ensures that Kentucky plumbers will stay abreast of changes in technology and methods within the plumbing industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation Applicants for a plumbing license will be affected by the change in the examination, and licensed plumbers will be affected by the requirement to attend continuing education courses.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a license will have a practical portion of the examination which is a different project than previously. Existing licenses will have to complete continuing education as set forth in a different regulation to renew their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost applicants or plumbers additional money as a result of this regulation. However, because the continuing education requirements must be met, the cost of obtaining those continuing education credits. It could cost anywhere from $50-$100 dollars depending on who provides the courses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The applicants will benefit from the new test because it offers a more up-to-date practical test. Existing licenses will benefit from the continued education by learning the latest code changes, keeping abreast of safety issues and exposure to courses or successfully operating a business.

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

(a) Initially: There should be no additional cost to implement this administrative regulation

(b) On a continuing basis· There should be no additional costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and existing staff will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this regulation should not result in an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for plumbing licenses have previously been established, and this regulation does not increase the existing fees in any way.

(9) TIERING: Is tiering applied? Tiering is not applied. All plumbers must use the same application process, take the same test and fulfill the continuing education 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, 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 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:090. Soil, waste, and vent systems.

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 for soil, waste, and vent systems. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system. [~~EO 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet~~]

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack shall be supported at its base and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at:

(a) Intervals not to exceed four (4) feet;

(b) At the base of each vertical stack; and

(c) At each trap branch as close to the trap as possible.

(5) Polyethylene pipe and fittings shall be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste and vent line.

Section 3. Prohibited Fittings. The following shall be prohibited:

(1) A double hub bend and double hub tee or inverted hub shall not be used on a sewer, soil or waste line;

(2) The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe;

(3) The use of a saddle hub; and

(4) Pipe installed with a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used.

Section 5. Protection of Material. (1) A pipe passing under or through a wall shall be protected from breakage

(2) A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be.

(a) Hub and spigot extra heavy or service weight cast iron;

(b) No-hub service weight cast iron;

(c) Aluminum;

(d) Galvanized steel;

(e) Galvanized wrought iron;

(f) Lead;

(g) Brass,

(h) Types K, L, M, and DWV copper;

(i) Standard high-frequency welded tubing produced and labeled as ASTM B-586-73;

(j) Types R-K, R-L, R-DWV brass tubing;

(k) DWV brass tubing produced and labeled as ASTM B-587-73;

(l) Seamless stainless steel tubing;

(m) Grade G or H produced and labeled as ASTM A-312;

(n) Polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891;

(o) Coextruded composite PVC pipe produced and labeled ASTM F-1488,

(p), Acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90, D-1788-73 or F-628; or

(q) Silicon iron or borosilicate

(2) A main or branch soil waste and vent pipe and fittings underground shall either be:

(a) Hub and spigot extra heavy or service weight cast iron;

(b) No-hub service weight cast iron;

(c) Aluminum;

(d) Type K or L copper pipe;

(e) Type R-K, R-L brass tubing;

(f) Lead; or

(g) Silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section.

(3) Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter and shall extend no less than twelve (12) inches above the concrete slab

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4	unlimited	172
5	unlimited	342
6	unlimited	576
8	unlimited	1600
10	unlimited	2900
12		4600

(2) A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil, and Vent Stacks. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections.

(1) A soil and waste stack or branch shall have correctly faced inlets for fixture connections

(2) Each fixture shall be independently connected to the soil or waste system

(3) A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be:

(a) Cast iron;

(b) Lead;

(c) Brass;

(d) Copper; or

(e) Plastic closet bend.

(4) A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13 Prohibited Connections. (1) A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture.

(2) A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. (1) Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.

(2) The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. (1) A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof.

(2) If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof.

(3) A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof.

(4) If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. (1) Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing.

(2) If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

Section 18. Protected Traps and Vents. (1) A fixture trap shall be protected against siphonage and backpressure.

(2) Air circulation shall be assured by means of an individual vent.

(3) A crown vent shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft 6 in

1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.

Section 20. Main Vents to Connect at Base. (1) All main vents or vent stacks shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.

(2)(a) Except as provided in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.

(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS		
Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. (1) A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity.

(2) If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents Not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. (1) A vent shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet.

(2) A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. If two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

Section 26. Floor Drain Individual Vent Not Required. (1) A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

(2) An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor Drain. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain shall be:
(1) Extra heavy cast iron;
(2) Service weight cast iron;
(3) Brass;
(4) Type (K) or (L) copper;
(5) Lead;
(6) ABS or PVC plastic; or
(7) Duriron.

Section 29. Indirect Waste Connections. (1) Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor shall connect indirectly with the house drain, soil or waste pipe.

(2) The drain shall be vented to the outside air.

(3) The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation.

(4) The connection shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. (1) A bar and soda fountain waste, sink or receptacle shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptor or floor sink may be installed flush with the finished floor if it has a full grate with an attached funnel to receive indirect waste.

(3) A floor receptor or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

Section 32. Refrigerator Wastes. A refrigerator waste pipe shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. A corrosive liquid shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the pit has a ventilated cover.

(3) If a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink and two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. (1) Underground piping for acid wastes shall be:

(a) Extra heavy salt glazed vitrified pipe;

(b) Silicon iron;

(c) Lead;

(d) Polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T;

(e) Polypropylene pipe produced and labeled as ASTM D-4101-85;

(f) Polypropylene pipe and fittings produced and labeled as ASTM F-1412; or

(g) Other materials approved in 815 KAR 20:020, Section 5.

(2) Piping for acid wastes and vents above ground shall be;

(a) Silicon iron;

(b) Lead;

(c) Borosilicate;

(d) Polyethylene pipe produced and labeled as ASTM D-1204-62T;

(e) Polypropylene pipe produced and labeled as ASTM D-4101-85; or

(f) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. A flat vent may be allowed if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap and venting provisions of the State Plumbing Code.

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: October 10, 2007

FILED WITH LRC: October 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2007, at 9 a.m., 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 November 15, 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 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 November 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 L. Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes regulations regarding the methods and materials to be used in Kentucky for soil, waste and vent systems.

(b) The necessity of this administrative regulation: Adds language to the requirement of underground waste pipe that requires an extension of no less than twelve (12) inches above the concrete slab.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the Office to promulgate an administrative regulation regulating plumbing, including materials and methods to be used.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists by specifying materials and methods to be used for soil, waste and vent systems.

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

(a) How the amendment will change this existing administrative regulation: Requires an extension of no less than twelve (12) inches above the concrete slab over the underground waste pipe.

(b) The necessity of the amendment to this regulation: The administrative regulation is necessary to ensure adequate access to the piping for future piping.

(c) How the amendment conforms to the content of the authorizing statute: The office is required to promulgate regulations establishing the methods and material to be used, and this regulation requires no less than twelve (12) inches of the underground waste pipe above the concrete slab.

(d) How the amendment will assist in the effective administration of the statutes: It will mandate plumbers have no less than twelve (12) inches of the underground waste pipe above the concrete slab. This will ensure proper access to the pipe.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those plumbers and plumbing businesses that install and utilize the underground waste pipe.

(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: Plumbing installations will have to meet this

standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3); No additional cost is expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The industry will benefit by greater consumer satisfaction and the ease of access for future plumbing piping.

(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 funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessaryto 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 applied in that different installations and designs are appropriate for different projects.

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.

(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 soil, waste and vent 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: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, 17.165, Chapter 157, 199.011(4), 199.892, 199.894, 199.896, 199.898, 600.020(1), 620.030(3), 45 C.F.R. 98.2, 42 U.S.C. 9801 et seq.

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.05(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process [~~licensure requirements for child day care centers~~].

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child" is defined by KRS 199.011(4).

(3) "Child-care center" is defined by KRS 199.894(3).

(4) "Developmentally appropriate" means suitable for the specific age range of the child.

(5) "Parent" is defined by 45 C.F.R. 98.2.

(6) "Secretary" means the Secretary for the Cabinet for Health and Family Services.

(7) "Nontraditional hours" means the hours of:

(a) 6 p.m. through 6 a.m. Monday through Friday; or

(b) 6 p.m. on Friday until 6 a.m. on Monday.

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center is a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee.

(2) A Type II child-care center is the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. Child care settings exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120 are:

(1) Summer camps certified by the cabinet as youth camps which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization in which a child attends no longer than two (2) weeks;

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-RCC-1, Application for a License to Operate a Child Care Center [~~Application for a License to Operate a Day Care Center, Form OIG-204~~].

(2) The issuance or reapproval [~~renewal~~] of a license shall be considered under the provisions of Sections 4 through 6[~~Section 5~~] of this administrative regulation.

(3) If the applicant for licensure is a:

(a) [A] Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) [A] Partnership, the application shall include a written statement from each partner that the partnership is current and viable.

(4) If the status of a corporation, partnership, or ownership of the child-care center[~~child care facility~~] changes, the new entity shall submit a completed OIG-RCC-1 [~~an application for licensure~~].

(5) If ownership of a child-care center [~~child care facility~~] changes and the cabinet approves licensure upon inspection of the child-care center [~~facility~~] under the new ownership, the effective

date on the license shall be the date of the approved inspection under the new ownership [retroactive to the date of final sale].

Section 5. [2.] License Issuance. (1) A license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(2) A director, employee, [or] volunteer, or any person with supervisory or disciplinary control over or having direct contact with a child shall submit to a background check; and [who submits to a voluntary background check at a child care center]

(a) May be employed or work with a child [children] on a probationary basis for up to ninety (90) calendar [180] days, pending completion of a:

1. Child abuse or neglect [central registry] check described in 922 KAR 1:470; and

2. Criminal records check required by KRS 199 896(19); and

(b) Shall not be left alone in the presence of a child if each required background check has not been completed.

(3) Upon completion of a child abuse or neglect[central registry] check or criminal records check, described in subsection (2)(a) of this section, a licensee shall discharge immediately[from employment] a director,[or] employee, volunteer, or any person:

(a) Whose name is listed on the central registry established by 922 KAR 1:470; or

(b) Who has been convicted of a crime defined by KRS 17.165(1) through [or] (3).

(4) An applicant who has been convicted of a nonviolent felony or misdemeanor shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after conviction.

(5) [A child care center may request that a volunteer submit to a voluntary:

(a) Child abuse or neglect central registry check as specified in 922 KAR 1:470; and

(b) Criminal records check.

(6) A volunteer who does not submit to a background check described in subsection (4) of this section shall:

(a) Be supervised by an employee for whom each background check required by KRS 199.896(19) has been completed; and

(b) Not be alone in the presence of a child.

(6) Effect of previous denial or revocation.

(a)] If an applicant for licensure has had a prior certification, license, registration, or permit to operate denied or revoked, the cabinet shall grant the applicant a license if.

(a)[1.] A three (3) [two (2)] year period has expired from the:

1. Date of the prior denial or revocation;

2. Last day of legal remedies being exhausted; or

3. Administrative hearing decision; and

(b) [2.] The applicant has:

1.[a.] The ability to comply with the provisions of this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896;

2.[b.] Completed, since the time of the prior denial or revocation, sixty (60) hours of training in developmentally appropriate child care practice, approved by the cabinet or its designee; and

3.[c.] Not had an application, certification, license, registration, or permit denied, revoked, or suspended for one (1) of the reasons set forth in KRS 199.896(19) or Section 10(2)[5(2)] of this administrative regulation.

(6)[(b)] If a license is granted after the three (3) [two (2)] year period specified in paragraph (a) of this subsection, the licensee shall serve a two (2) year probationary period during which the child-care [child care] center shall be inspected on at least a quarterly basis.

(7) A license shall specify:

(a) A particular physical location;

(b) A designated sponsor or owner as operator;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff,

(e) If provided, nontraditional hours[nighttime care];

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care [child care] center.

(8) To qualify for and maintain a license, a child-care [child care] center shall:

(a) Provide written documentation from the local authority [zoning commission] showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;

(e) Provide written proof of liability insurance coverage of at least $100,000 per occurrence;

(f) Comply with provisions of this administrative regulation, [and] 922 KAR 2.110, and 922 KAR 2:120; [and]

(g) Cooperate with the state agency during an investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(3); and

(h) Have a director who meets the requirements listed in 922 KAR 2:110.

(9) A child-care center shall allow the cabinet or its designee and parent unannounced access to the child-care center during the hours of operation.

(10) [(9) Corrective plans.

(a) The cabinet shall perform an on-site child care center inspection, described by KRS 199.896(14), in order to ascertain compliance with subsection (7) of this section. A regulatory violation identified during an inspection shall be reported to the child care center in a written statement of deficiency in accordance with KRS 199 896(5).

(b) A child care center not in compliance shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:

1. Specific action undertaken to correct a violation;

2. The date action was or is anticipated to be completed, and

3. Action utilized to assure ongoing compliance.

(c) The Cabinet for Health and Family Services shall review the plan and notify the child care center, in writing, of the decision to:

1. Accept the plan;

2. Not accept the plan, or

3. Deny, suspend, or revoke the child care center's license, in accordance with Section 5 of this administrative regulation.

(d) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(e) A child care center notified of unacceptability of its plan shall:

1. Within ten (10) days of notification, submit an amended plan; or

2. Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).

(10)] A license shall be issued and reapproved [renewed] if the center has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).

(11) A license shall not be sold or transferred.

(12) Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4),(5), and (6) shall be:

(a) In writing to the cabinet or its designee; and

(b) Signed by each owner listed on the license.

(13) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(14) [the center.

(a) A licensee shall notify the cabinet, in writing, if there is a change to the child care center as listed in 922 KAR 2:110, Section

~~4(4) and (5)~~

~~(b) The notification shall be signed by each owner listed on the license application.~~

~~(c) A fee shall not be charged.~~

~~(d) Notification shall be submitted to the Division of Licensed Child Care, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(13)~~] The license shall be posted in a conspicuous place in the child-care [~~child-care~~] center.

(15) [~~(14)~~] A child-care [~~child-care~~] center shall not begin operation without a license to operate from the cabinet.

(16) [~~(15)~~] A child-care [~~child-care~~] center operating without a license shall be subject to legal action.

Section 6. [~~3.~~] Fees. (1) A nonrefundable [~~An initial~~] licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) Licensing fees shall be:

(a) [~~A check or money order~~] Payable to the Kentucky State Treasurer;

(b) [~~shall be~~] Attached to the licensure application; and

(c) Paid by:

1. Cashiers check;

2. Certified check; or

3. Money order.[~~(3) A fee shall not be refunded if an inspection has been made by the cabinet or the State Fire Marshall's Office.~~]

Section 7. [~~4.~~] Annual Reapproval [~~Renewal~~].

(1) A licensee seeking reapproval [~~renewal~~] shall submit, one (1) month prior to license expiration, an OIG-RCC-2, Application for Renewal of a License to Operate a Child Care Center; and

(2) Meet the requirements specified in Sections 4 through 6 of this administrative regulation [~~Application for Renewal of a License to Operate a Day Care Center, Form OAG-204A~~].

Section 8. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) A child-care center shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days of receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed; and

(c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify the child-care center, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 10 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within ten (10) calendar days of notification, submit an amended plan; or

(b) Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).

(7) Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may suspend, deny, or revoke an application for licensure or license.

(8) A statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days of notification in accordance with KRS 199.896(5)(c).

Section 9. Intermediate Sanctions. (1) If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:110, or 922 KAR 2:120, the cabinet may:

(a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or

(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction may result in a suspension or revocation of the license if a child-care center:

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.

Section 10. [~~5.~~] Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over, or direct contact with, a child fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

(3) A child abuse or neglect [~~central registry~~] check required by KRS 199.896(19) shall be conducted:

(a) One (1) time; and

(b) Within ninety (90) calendar days of initial employment [~~At the time an individual applies for:~~

~~1. Initial licensure on or after July 14, 2000; or~~

~~2. Employment in a child care center on or after July 14, 2000~~].

(4) A director, employee, volunteer, any person with supervisory or disciplinary control over, or having direct contact with, a child shall report to the licensee if: [~~Each volunteer who submits to a background check and each child care center employee, including a director, shall report to the licensee if, subsequent to each background check required by KRS 199.896(19), the volunteer or employee is:~~]

(a) Convicted of a violent crime or sex crime defined by KRS 17.165(1) through [~~and~~] (3);

(b) The subject of a cabinet child abuse or neglect investigation; or

(c) Found by the cabinet or a court to have abused or neglected a child.

(5) Each licensee shall report to the cabinet or its designee if the licensee, director, [~~an~~] employee, [~~or~~] volunteer, or another person who submitted to a background check meets a criterion of subsection (4)[~~(a) through (c)~~] of this section.

(6) Emergency action shall be taken in accordance with KRS 199.896(4).

(7) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(8) The cabinet may deny an applicant for a license if:

(a) The applicant has been previously denied or revoked;

(b) Denial or revocation proceedings were initiated and the licensee voluntarily relinquished the license;

(c) An appeal of a denial or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:110, 922 KAR 2:120, or this administrative regulation; or

(e) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied or revoked as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity.

(9) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet representative's ability to perform an official duty; or

(b) A cabinet representative or parent is denied access to:

1. A child; or

2. The child-care center.

(10) The cabinet or its designee shall suspend the license if regulatory violations are found that pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4).

Section 11. [~~6.~~] Failure to Pay Civil Monetary Penalty. After sixty (60) calendar days of completing the administrative appeal

process, a license shall be denied or revoked when a child-care center fails to:

(1) Pay the civil monetary penalty levied against the center; or

(2) Make arrangements to pay a civil monetary penalty and comply with the arrangement.

Section 12. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-RCC-3, Request for Appeal, [~~a written request~~] for a hearing. The request shall:

(a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-RCC-3 [~~a written request~~] for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 13. [~~7.~~] Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency [~~, and~~

~~(e) Specify whether the applicant for licensure or licensee requests a meeting with cabinet staff~~].

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The first-level informal dispute resolution meeting shall be conducted by:

(a) The regional program manager[~~,~~] or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar [~~five (5)~~] days of completion of the first-level informal dispute resolution meeting, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) [~~If a first-level informal review is requested in lieu of a dispute resolution meeting, the regional program manager or designee shall comply with the provisions of subsection (5)(a) through (c) of this section within ten (10) days of receipt of the request for first-level informal dispute resolution.~~

~~(7)~~] An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:

(a) Proceeding with a hearing according to KRS 13B.050; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated [~~Licensed~~] Child Care or designee within ten (10) calendar days of receipt of the first level [~~regional program manager's~~] decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.

(7) [~~(8)~~] Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated [~~Licensed~~] Child Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.

(8) [~~(9)~~] The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(9) [~~(10)~~] Within ten (10) calendar [~~five (5)~~] days of completion of the second-level informal dispute resolution meeting, the Director of the Division of Regulated [~~Licensed~~] Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(10) [~~(11)~~] If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated [~~Licensed~~] Child Care or designee shall comply with the provisions of subsection (9)[~~(10)~~](a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.

(11) [~~(12)~~] If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(12) [~~(13)~~] If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.

(13) [~~(14)~~] A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(14) [~~(15)~~] Emergency action taken in accordance with Section 10(6) [~~5(6)~~] of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 14. [~~8.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "OIG-RCC-1, Application for a License to Operate a Child Care Center", edition 12/07; [~~"OIG-204, Application for a License to Operate a Day Care Center, edition November 2000; and~~]

(b) "OIG-RCC-2, Application for Renewal of a License to Operate a Child Care Center", edition 12/07; and

(c) "OIG-RCC-3, Request for Appeal", edition 12/07. [~~"OIG-204A, Application for Renewal of a License to Operate a Day Care Center, edition November 2000.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Resources Building, 275 East

Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Dearinger, (502) 564-3556, ext 4227

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a child-care center licensure and describes the informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 199.896(2) and 199.896(6). KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

(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 describing the child-care settings required to be licensed; the application process and requirements to receive a license; the process to be followed if a center is not in regulatory compliance; the process for plans to correct deficiencies and regulatory violations, the intermediate sanction process followed when regulatory violations are cited; the basis for denial, suspension, or revocation of a license; the process for civil monetary penalties; and the appeal process. This administrative regulation also incorporates definitions from 922 KAR 2:001, which is undergoing simultaneous repeal.

(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 will reduce the timeframe an employee of a child-care center may work with children pending the result of required background checks from 180 to 90 days; increase the timeframe for licensure after a child-care center is denied or revoked from a two (2) to three (3) year period, describe the process and timeframe a child-care center is required to adhere to when responding to a statement of deficiency; add policy to address the failure of a child-care center to make arrangements to pay or pay civil monetary penalties imposed due regulatory deficiencies, revise timeframes for the informal dispute resolution process, and revise forms contained in material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment of this administrative regulation is necessary to ensure the health and safety of children in licensed child-care settings; clearly describe enforcement of licensure requirements to the provider community; and make corrections to comply with KRS Chapter 13A. These recommendations were developed with Department staff in response to the National Association of Child Care Resource and Referral Agencies (NACCRRA) report published in March 2007 that ranked Kentucky's standards for child care centers 49th in the nation.

(c) How the amendment conforms to the content of the authorizing statutes: he amendment conforms to the content of the authorizing statutes by establishing licensure standards and describing the informal dispute resolution process.

(d) How the amendment will assist in the effective administration of the statutes:The amendment clarifies procedures and responsibilities contained in the administrative regulation and makes technical corrections to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: ata from the Office of the Inspector General, Division of Regulated Child Care, indicate as of August 9, 2007, that there are 2156 Type I child-care centers and 131 Type II child-care centers 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: Employees of child-care centers will be allowed to work with children pending results from required background checks for 90 days from the date of hire. The amendment reduces this timeframe from 180 days. The reduction will mean child-care centers will need to expedite the completion and submittal of necessary forms for required background checks. Once received by the cabinet and Administrative Office of the Courts, the current average turnaround for completing all necessary background checks is less than one month. The amendment increases the period for re-licensure after a child-care center has been denied or revoked from two (2) to three (3) years. This change will not impact currently licensed centers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The enhanced licensure standards will better ensure the health and safety of children cared for in a licensed child-care setting. These recommendations were developed with Department staff in response to the National Association of Child Care Resource and Referral Agencies (NACCRRA) report published in March 2007 that ranked Kentucky's standards for child care centers 49th in the nation.

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

(a) Initially: There will be no additional costs to the cabinet as a result of this amendment.

(b) On a continuing basis: There will be no additional costs to the cabinet as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? There is no fiscal impact as a result of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funds or fees needed 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 establishes fees for child care licensure in accordance with KRS 199.896.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 45 C.F.R. 98.2, 42 U.S.C. 9801 et seq.

2. State compliance standards KRS Chapter 13B, 17.165,

Chapter 157, 199.011(4), 199.892, 199.894, 199.896, 199.898, 600.020(1), 620.030(3), 194A.050(1), 199 896(2)

3. Minimum or uniform standards contained in the federal mandate.45 C.F.R. 98 2, 42 U.S.C. 9801 et seq.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements 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? Department for Community Based Services-Division of Child Care and the Office of the Inspector General-Division of Regulated Child Care 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.45 C.F.R. 98.2, 42 U S C. 9801 et seq., KRS Chapter 13B, 17 165, Chapter 157, 199.011(4), 199.892, 199.894, 199.896, 199.898, 600.020(1), 620 030(3), 194A.050(1), 199.896(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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 revenue for the state or local government either for subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment to the administrative regulation will not cost any extra to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment to the administrative regulation will not cost any extra to administer.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:100. Certification of family child-care [~~child care~~] homes.

RELATES TO: KRS Chapter 13B, [~~13B.005-13B.070, 13B.125,~~] 17.165, 186.020, 194A.050(1), 199.011(2), 199.894(5), 199 896(18), 199.898, 199 8982, 214.036, 314.01(5), 600.020[~~(1)~~], 620.030, 45 C F.R. 98 2, 49 C F.R. 571.213.

STATUTORY AUTHORITY: KRS 13B.170, 194A 050(1) 199.8982(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care [~~child care~~] home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care [~~child care~~] home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care [~~child care~~] home providers.

Section 1. Definitions. (1) "Assistant" means a person:

(a) [~~Sixteen (16) years of age or older;~~

~~(b) Under direct supervision of a provider or substitute provider; and~~

~~(c)~~] Who meets the requirements listed in Section 2 (4)[~~(3)~~] and Section 9(7), (8), and (9) of this administrative regulation; and

(b) Who works either paid or unpaid.

(2) "Cabinet" is defined by the KRS 199.011(2).

(3)[~~(2)~~] "Child" means a person under:

(a) Thirteen (13) years of age; or

(b) Eighteen (18) years of age if the minor has a special need in which supervision is required.

(4)[~~(3)~~] "Corporal physical discipline" is defined by KRS 199.896(18).

[~~(4) "Employee" means a person who:~~

~~(a) Works either paid or unpaid for a certified family child care home provider; and~~

~~(b) Meets the requirements of Sections 2(2)(a), (3), and (6) of this administrative regulation.~~]

(5) "Family child-care [~~child care~~] home" is defined by KRS 199.894(5).

(6) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse or practitioner; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(7)[~~(6)~~] "Home" means the private primary residence of the certified family child-care [~~child care~~] home provider and contiguous property

(8)[~~(7)~~] "Infant" means a child who is less than twelve (12) months of age.

(9) "Parent" is defined by 45 C F.R. 98.2.

(10) "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities

(11) "Premises" means the building and contiguous property in which child care is provided and certified

(12)[~~(8)~~] "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home [~~Provides care for preschool children, school-age children, or both, inside his own home for less than twenty-four (24) hours a day~~];

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(13) "Related" means the child, grandchild, niece, nephew, sibling, step-child, or child in legal custody of the provider.

(14) "School-age child" means a child attending kindergarten, elementary, or secondary education.

(15) [~~(9) "Provider's own related children" means:~~

~~(a) The provider's own child or children;~~

~~(b) A child or children in the provider's legal custody;~~

~~(c) The provider's grandchild or grandchildren;~~

~~(d) The provider's niece or nieces;~~

~~(e) The provider's nephew or nephews;~~

~~(f) The provider's stepchild or stepchildren; or~~

~~(g) The provider's sibling.~~

~~(10) "Substitute provider" means a person who shall:~~

~~(a) Be used in the absence of a certified family child care home provider; and~~

~~(b) Meet the requirements of Section 10(8) and (9) of this ad-~~

~~ministrative regulation.~~

~~(11)~~] "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The cabinet or its designee [~~Department for Community Based Services~~] shall be responsible for certifying a family child-care [~~child care~~] home.

(2) Effective January 1, 2009, an initial applicant for certification shall:

(a) Be at least eighteen (18) years of age;

(b) Have a:

1. High school diploma;

2. A General Equivalency Diploma (GED);

3. Qualifying documentation from a comparable education entity; or

4. Commonwealth Child Care Credential as described in 922 KAR 2:250;

(c)[~~(b)~~] Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-RCC-4 [~~DCC-178~~], Application for Certified Family Child Care Home [~~Certification~~];

2. A completed OIG-RCC-6 [~~DCC-179~~], Self-Check List; [~~and~~]

3. A nonrefundable certification fee pursuant to KRS 199 8982(1)(b);

4. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

5. Documentation of [~~(c) Meet~~] the requirements of KRS 199.8982(1)(a); and

6. A OIG-RCC-5, Central Registry Check, to complete a child abuse or neglect check [~~(d) Submit to a check of the central registry~~] in accordance with 922 KAR 1:470; and

7. A completed criminal records check for the previous state of residence if the applicant has resided outside the state of Kentucky in the last five (5) years; and

(d) Obtain commercial liability insurance of at least $50,000 per occurrence

(3) An applicant shall be currently certified by a cabinet-approved agency in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(4)[~~(3)~~] An adult living in the home of the applicant and the[~~, an~~] applicant's assistant [~~, employee, and substitute~~] shall submit:

(a) To a criminal records check required by KRS 17.165 within the past year by the Justice Cabinet [~~Kentucky State Police~~] or Administrative Office of the Courts;

(b) To a child abuse or neglect check on OIG-RCC-5 [~~check of the central registry~~] in accordance with 922 KAR 1:470; and

(c) A copy of the results of a negative tuberculosis skin test or a health professional's statement documenting that the adult, [~~Written verification from a licensed health care professional or a health department that the individual~~] is free of active tuberculosis.

(5) An applicant of assistant who has been convicted of a non-violent felony or misdemeanor may be approved on case by case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after the conviction.

(6)[~~(4)~~] Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b).

(7)[~~(5)~~] If the requirements of subsections (1) through (6) [~~(2) and (3)~~] of this section, Section 3, and Sections 9 through 17 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199 8982 [~~for a two (2) year period~~].

(8)[~~(6)~~] Within three (3) months of submission to the cabinet of a complete OIG-RCC-4 [~~DCC-178~~], an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with [~~as required by~~] KRS 199 8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 9(1) of this administrative regulation.

(9)[~~(7)~~] The family child-care [~~child care~~] home certificate shall:

(a) Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

(b) Contain the:

1. [~~The~~] Name and address of the child care provider;

2. Maximum number of unrelated children who may be served,

3. Identification number; and

4. Effective and expiration date; and

(c) Be valid for only the:

1. Name of the individual authorized on the certificate to operate a family child child-care [~~child care~~]; and

2. Residential address printed on the certificate.

(10)[~~(8) Family child care certification shall be renewed every two (2) years. The family child care home provider shall submit at least one (1) month prior to the expiration of certification:~~

~~(a) A completed DCC-178, Application for Family Child Care Certification;~~

~~(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);~~

~~(c) A physician's statement documenting the family child care home provider's health is satisfactory for continued operation of a family child care home; and~~

~~(d) Proof that the family child care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 14 of this administrative regulation.~~

~~(9)~~] A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-RCC-4 [~~DCC-178, Application for Family Child Care Certification~~]; and

(c)[~~(b)~~] An inspection of the new home.

Section 3. Renewal of Certification. (1) Family child-care certification shall be renewed every two (2) years.

(2) The family child-care home provider shall submit one (1) month prior to expiration of certification:

(a) A completed OIG-RCC-4;

(b) A nonrefundable renewal fee pursuant to KRS 199 8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 9 through 17 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the application;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199 8982(1)(b); and

(c) Approve the family child-care home if the requirements in Sections 2, 3, and 9 through 17 of this administrative regulation are met.

Section 4. Denial of Application for Certification. (1) An application for initial certification or renewal of certification as a family child-care [~~child care~~] home provider shall be denied if the applicant, assistant, [~~employee, substitute,~~] or an adult residing in the household [~~who has direct contact with a minor~~] has:

(a) Abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470; or

(b) A history of behavior that may impact the safety or security of a child in care including:

1. A criminal conviction of a violent crime or sex crime as defined in KRS 17.165;

2. A conviction for a drug-related felony; or

3. Other behavior or condition indicating inability to provide reliable care to a child.

(2) An application for certification as a family child-care [~~child care~~] home shall be denied if the applicant:

(a) Fails to comply with the minimum certification standards specified in Sections 9 through 17 [~~10 through 14~~] of this administrative regulation and KRS 199.8982; or

(b) Knowingly misrepresents or submits [~~offers~~] false information on the application or other form required by the cabinetor its

designee [, pursuant to 922 KAR Chapter 2].

(3) Effect of previous denial or revocation. [:]

(a) If an applicant for certification has had a prior certificate or license to operate a child care business denied or revoked, the cabinet shall grant the applicant a certificate to operate a family child-care [child care] home if:

1. A two (2) year period has expired from the:

a. Date of the prior denial or revocation;

b. Last day of legal remedies being exhausted; or

c. Date of the Final Order from an administrative hearing; and

2. The applicant has:

a. The ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, certificate, or license to operate as a child care provider denied or revoked for:

(i) Conviction of a violent crime or sex crime as defined in KRS 17.165; or

(ii) Abuse or neglect of a child according to a check of the central registry in accordance with 922 KAR 1:470.

(b) If a certificate is granted after the two (2) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 5 [4.] Intermediate Sanctions. (1) If the cabinet determines that a certified family child-care [child care] home provider is in violation of this administrative regulation, the cabinet shall [may]:

(a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or

(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall [may] result in a [nonemergency] suspension or revocation of certification if a certified family child-care [child care] home provider:

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.

Section 6 [5. Nonemergency Suspension. (1) If the cabinet determines that a certified family child care home provider is in violation of this administrative regulation or fails to correct a deficiency by the date specified on the corrective action plan, a nonemergency suspension for a period not to exceed sixty (60) calendar days may occur.

(2) At least thirty (30) calendar days prior to the start date of a nonemergency suspension, a certified family child care home provider shall receive by personal service or through certified mail, return receipt requested, a written notice from the cabinet that:

(a) Specifies the:

1. Effective date;

2. Duration of the suspension; and

3. Corrective action necessary for reinstatement of the certification;

(b) Explains the reason for the suspension;

(c) Advises the family child care home provider of the right to request an appeal prior to the effective date of the nonemergency suspension;

(d) Specifies that the nonemergency suspension shall be stayed if an appeal is requested;

(e) Specifies that if the provider does not request an appeal of the nonemergency suspension or if the nonemergency suspension is upheld following the hearing, the provider shall cease operation of the family child care home during the period recommended for suspension;

(f) Specifies that suspension may lead to revocation, and

(g) Requires the family child care home provider to surrender the certificate of operation to the cabinet when the suspension becomes effective.

(3) If a certified family child care home provider's certification has been suspended for a nonemergency reason, the cabinet or designated staff shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Assist the parent in securing alternate child care arrangements.

(4) By the end of the nonemergency suspension period, certification shall be:

(a) Reinstated; or

(b) Revoked for failure to take corrective action necessary for reinstatement of the certification.

Section 6. Emergency] Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125, by issuing an emergency order that results in suspension of the operation of a certified family child-care [child care] home. (1) An emergency order shall:

(a) Be served to a certified family child-care [child care] home provider in accordance with KRS 13B.050(2); [by:

1. Certified mail, return receipt requested, or

2. Personal service;] and

(b) Specify the regulatory violation that caused the emergency condition to exist [corrective action necessary for reinstatement of certification].

(2) Upon receipt of an emergency order, the provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer [Assist] a parent for assistance in locating [securing] alternate child care arrangements.

(4) The provider's certification for operation of a family child-care [child care] home shall be revoked if:

(a) The provider does not request a hearing; or

(b) The condition that resulted in the emergency order is [has] not [been] corrected.

Section 7. Revocation.(1) A family child-care [child care] home provider's certification shall be revoked if the provider:

(a) Knowingly misrepresents or submits [offers] false information on the application or other form required by the cabinet or its designee [pursuant to 922 KAR Chapter 2];

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by a parent or cabinet representative to:

1. A child; or

2. Space in the home used for child care;

(d) Is convicted of a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care [child care] home due to a medical condition; or

(f) Is unable to continue to meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 9 through 17 [10 through 14] of this administrative regulation.

(2) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of revocation [from the cabinet shall be] delivered by personal service or through certified mail[, return receipt requested,] at least thirty (30) calendar days prior to the effective date of the revocation.

(3)The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care [child care] home upon revocation;

(c) Advise the family child-care [child care] home provider of the right to request an appeal on an OIG-RCC-7, Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care [child care home] provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4)[(3)] If a provider's certification has been revoked, the cabinet or its designee and the provider [designated staff] shall make

reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer [~~Assist~~] the parent for assistance in locating [~~securing~~] alternate child care arrangements.

Section 8. Appeal of Denials, Intermediate Sanctions, [~~Nonemergency~~] Suspension, and Revocation. (1) If the cabinet denies certification, imposes an intermediate sanction, suspends certification [~~for a nonemergency situation~~], or revokes certification, the family child-care [~~child care~~] home provider may request an appeal by completing an OIG-RCC-7 and shall be afforded a hearing in accordance with KRS Chapter 13B.

[~~(2) If an intermediate sanction or nonemergency suspension leads to revocation of certification, no further appeal shall be permitted.~~

~~Section 9. Appeal of Emergency Suspension. (1) A certified family child care home provider may appeal an emergency order suspending operations, in compliance with KRS 13B.125(3).~~]

(2) If a hearing officer's final order from an administrative hearing does not uphold a [~~an emergency~~] suspension, the provider may resume providing child care.

Section 9. [~~10.~~] Standards for the Provider. (1) [~~Upon approval of certification as a family child care home,~~] The provider shall [~~:~~

~~(a) Meet minimum requirements established in KRS 199.8982 and Sections 2, 3, and 10 through 14 of this administrative regulation;~~

~~(b)~~] complete annually at least nine (9) [~~six (6)~~] hours of cabinet-approved child development training beginning with the second year of operation [~~; and~~

~~(c) Obtain commercial liability insurance of at least $50,000 per child, per occurrence~~].

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) If the provider cares for more than four (4) infants, including the provider's own or related infants, the provider shall have an assistant present.

(4) A provider shall not care for more than six (6) children under the age of six (6) years old, including the provider's own or related children.

(5) The maximum number of unrelated children in the care of a certified family child-care [~~child care~~] home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

(6) [~~The certified family child care home provider shall be currently certified in:~~

~~(a) Infant and child cardiopulmonary resuscitation or "CPR" by an agency approved by the cabinet or Board of Emergency Services; and~~

~~(b) Infant and child first aid by an agency approved by the cabinet or Board of Emergency Services.~~

~~(7)~~] If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours; and

(b) Employ an assistant [~~or employee~~] during the period of respite.

(7) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

(a) CPR; and

(b) First aid.

(8) An assistant [~~A substitute provider~~] shall be

(a) Eighteen (18) years of age or older;

(b) Under direct supervision of a provider;

(c) Used for providing care in a certified child-care home; and

(d) Used in the absence of the certified provider. [~~Certified by a cabinet-approved agency in:~~

~~1. Infant and child CPR, and~~

~~2. Infant and child first aid.~~]

(9) An assistant [~~A substitute provider~~] used in the absence of the family child-care [~~child care~~] home provider in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) [~~six (6)~~] hours of cabinet-approved training in:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse; [~~and~~]

(c) Developmentally-appropriate child care practice; and

(d) Early care and education.

Section 10. The General Requirements of [~~11.~~] the Family Child-Care [~~Child Care~~] Home Environment. (1) The provider's home and each play area used for child care shall:

(a) Be safe; and

(b) Have adequate:

1. Heating and cooling [~~Heat~~];

2. Light; and

3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(3) New applicants and providers who change location [~~after the effective date of this administrative regulation~~] shall:

(a) Meet the requirements of subsection (2)(b) through (d) of this section; and

(b) Have at least two (2) unblocked exits to the outside on each floor level used for child care.

(4) The home and areas accessible to children in care shall be free from items harmful to children including [~~of hazards and~~] the following items [~~shall be inaccessible to a child in care~~].

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Alcoholic beverages;

(f) Plastic bags; and

(g) Litter and rubbish.

(5) [~~Medication, including medicine that requires refrigeration shall be stored in a container or area with a lock to ensure a child is unable to access the medication within the container or area.~~

~~(6)~~] Guns and ammunition shall be stored away from the presence of children, in separate locked containers, [~~a locked container~~] which, in order to be opened, require [~~requires~~] a:

(a) Key; or

(b) Combination.

(6)[~~(7)~~] Electrical outlets not in use shall be covered.

(7)[~~(8)~~] An electric fan, floor furnace, or freestanding heater or fireplace, shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8)[~~(9)~~] The home shall have:

(a) At least one (1) working land-line telephone on each level used for child care with a residential or commercial line; and

(b) A list of emergency numbers posted by each telephone, including numbers for the.

1. Police;

2. Fire station;

3. Emergency medical care, rescue squad; and

4. Poison control center.

(9)[~~(10)~~] Equipment and toys shall be:

(a) Developmentally appropriate to the age of children in care;

(b) In sufficient quantity for the number of children in care; and

(c) Safe, sound, clean, and in good repair.

(10)[~~(11)~~] Television or video viewing by a child shall be limited to:

(a) Two (2) hours daily;

(b) The planned program activities; and

(c) Developmentally-appropriate child-related content.

(11)[~~(12)~~] Stairs and steps used for children in care shall be:

(a) Solid;

(b) Safe; and

(c) Railed.

(12)[~~(13)~~] If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(13) [~~(14) The provider shall:~~

~~(a) Maintain first aid supplies that are easily accessible for use in an emergency, but these supplies shall be inaccessible to the children in care; and~~

~~(b) Wash superficial wounds with soap and water before bandaging.~~

~~(15) First aid supplies shall include a fully equipped first aid kit containing the following nonexpired items:~~

~~(a) Liquid soap;~~

~~(b) Adhesive bandages;~~

~~(c) Sterile gauze;~~

~~(d) Medical tape;~~

~~(e) Scissors;~~

~~(f) A thermometer;~~

~~(g) Flashlight;~~

~~(h) Cold pack;~~

~~(i) First aid book;~~

~~(j) Disposable gloves; and~~

~~(k) A CPR mouthpiece.~~

~~(16)~~] Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:

(a) Play; and

(b) Activities that meet the developmental needs of the children in care.

(14)[~~(17)~~] An outdoor play area shall be free of hazards.

(15)[~~(18)~~] Each child in an outdoor play area shall be under the direct supervision of the provider[~~, substitute, employee,~~] or assistant.

(16)[~~(19)~~] Outdoor stationary play equipment shall be:

(a) Securely anchored;

(b) Developmentally appropriate,

(c) Age appropriate; and

(d) Safe.

(17)[~~(20)~~] A trampoline shall not be accessible to a child in the care of a provider.

(18)[~~(21)~~] A swimming pool on the premises shall:

(a) Be maintained;

(b) Have a water filtering system;

(c) Be supervised when in use; and

(d) Be inaccessible to children when not in use.

(19) An above-ground pool shall have a stationary wall no less than four (4) feet tall with no hand holds or foot holds

(20)[~~(22)~~] A fire and tornado drill shall be conducted during hours of operation:

(a) At least monthly; and

(b) Documented.

(21)[~~(23)~~] An earthquake drill shall be conducted during hours of operation:

(a) At least quarterly; and

(b) Documented.

(22)[~~(24)~~] During hours of operation, the provider[~~,~~] and other persons in the home shall

(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance prescribed by a physician; and

(b) Prohibit smoking in the presence of children in care.

(23)[~~(25)~~]During a provider's absence, an assistant [~~a substitute provider~~] shall be physically present at the home during hours of operation.

(24)[~~(26)~~] A provider shall not be employed outside of the home during regular hours of operation.

(25)[~~(27)~~] The home shall:

(a) Be clean;

(b) Be uncluttered;

(c) Be free of insects and rodents;

(d) Have a water supply that is:

1. Properly located;

2. Protected;

3. Adequate; and

4. Of a source approved by the local health department; and

(e) Have bathrooms, including toilets, sinks, and potty chairs that are:

1. Sanitary; and

2. In good working condition.

(26) A child shall wash hands with liquid soap and warm running water:

(a) Before and after eating or handling food;

(b) After toileting or diaper change;

(c) After handling animals;

(d) After wiping or blowing nose;

(e) After touching items soiled with body fluids or waste; and

(f) After outdoor and indoor play time.

(27)[~~(28)~~] The provider and an [~~,~~] assistant [~~, substitute, and each~~] shall:

(a) Wash hands with liquid soap and warm running water;

1. Before and after diapering a child;

2. Before and after feeding a child;

3. After toileting or assisting a child with toileting;

4. After handling animals;

5. Before dispensing medication;

6. After caring for a sick child; and

7. After wiping or blowing a child's or own nose.

(b)[~~Assure that a covered, leak-proof container is:~~

~~1. Available for soiled diapers;~~

~~2. Emptied daily; and~~

~~3. Cleaned daily;~~

~~(c) Use sanitary procedures when preparing and serving food;~~

~~(d)~~] Assure that a child shall not share:

1. Cups;

2. Eating utensils;

3. Wash cloths; [~~and~~]

4. Towels; and

5. Toiletry items.

(28) [~~(e) Refrigerate perishable food and beverages.~~

~~(29)~~] The refrigerator shall:

(a) Be in working order; and

(b) Have a working thermometer demonstrating that the refrigerator is maintained at a temperature of forty-five (45) degrees Fahrenheit or below.

(29)[~~(30)~~] Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(30) [~~(31) Unless provided as part of the fee for child care, an infant's formula shall be prepared and provided by the parent.~~

~~(32) If more than one (1) bottle-fed child is in the care of the provider, each child's bottle shall be labeled.~~

~~(33)~~] While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped; [~~or~~]

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(31) An open area in the child-care home shall be protected with screening to prevent the entrance of vermin.

(32) [~~(34) Milk or milk products served shall be pasteurized.~~

~~(35) Meals shall:~~

~~(a) Be served in an amount appropriate to the age of the child, and~~

~~(b) Include appropriate types of food according to the age of the child.~~

~~(36) Breakfast shall include:~~

~~(a) Milk;~~

~~(b) Bread; and~~

~~(c) Fruit or vegetable or 100 percent juice.~~

~~(37) A snack shall include two (2) of the following:~~

~~(a) Milk;~~

~~(b) Protein source;~~

~~(c) Fruit or vegetable or 100 percent juice; or~~

~~(d) Bread.~~

~~(38) Lunch and dinner shall include:~~

~~(a) Milk;~~

~~(b) Protein source;~~

~~(c) Two (2) vegetables or a fruit and one (1) vegetable; and~~

~~(d) Bread.~~

~~(39) Windows and doors shall be screened for ventilation.~~

~~(40) A household pet shall be vaccinated for rabies.~~

~~(41)~~] Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.

(33)[~~(42)~~] Adequate space shall be provided at rest-time for each child in care more than four (4) hours:

(a) Rest-time area shall be comfortable, clean, safe, and in good repair.

(b) An individual bed, crib, play pen, or cot with comfortable, clean, safe bedding shall be provided for each child

(c) A crib or play pen shall meet the Consumer Products Safety Commission Standards.

(d) [~~(b)~~] Individual linens shall be:

1. Provided for each child; and

2. Changed.

a. At least weekly; or

b. If soiled or wet, immediately.

(34)[~~(43)~~] If overnight care is provided, the caregiver shall:

(a) Remain awake until every child in care is asleep; and

(b) Sleep on the same floor level of the home as an infant or toddler.

(35) [~~; and~~

~~(c)1. Provide an individual bed, crib, playpen, or cot with comfortable, clean, and safe bedding for each child.~~

~~2. The crib or playpen shall meet the Consumer Products Safety Commission Standards.~~

~~(44)~~] A written and posted routine plan shall be established for daily:

(a) Activity;

(b) Opportunity for outdoor play; and

(c) Reading.

(36)[~~(45)~~] A child who is not asleep shall be visually supervised.

(37)[~~(46)~~] Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises without the caregiver.

(38)[~~(47)~~] Use of corporal physical discipline is prohibited, pursuant to KRS 199 896(18).

(39)[~~(48)~~] A child shall be released from the family child-care [~~child care~~] home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child, or

(c) In an emergency, a person designated over the telephone by the parent

(40)[~~(49)~~] To assure a healthy environment, the provider shall maintain a:

(a) Current immunization certificate for each child within thirty (30) days of enrollment, unless an attending physician or parent objects to the immunization of a child pursuant to KRS 214.036;

(b) Written record [~~DCC-180, Child's Health and Emergency Information~~]:

1. Completed and signed by the child's parent [~~or guardian~~]; and

2. Retained on file on the first day the child attends to [~~and~~] include:

a. The child's name, address, and date of birth;

b. The name of each individual to whom the child may be released;

c. The general status of the child's health;

d. Allergies or restrictions on the child's participation in activities, with specific instructions from the child's parent or physician,

e. The name and phone number of each person to be contacted in an emergency situation;

f. The name and phone number of the child's physician and preferred hospital; and

g. Authorization by the parent [~~or guardian~~] for the provider to seek emergency medical care in the parent's absence.

(41)[~~(50)~~] A provider shall provide immediate notification of a medical emergency to the:

(a) Parent;

(b) Person exercising custodial control; or

(c) Family physician, if the parent or person exercising custodial control is unavailable.

(42)[~~(51)~~] A quiet, separate area that is [~~can be~~] easily supervised shall be provided for a child too sick to remain with other children.

(43) [~~(52) Prescription medication shall not be administered to a child in care, except if authorized by:~~

~~(a) A licensed physician; and~~

~~(b) The daily written request of the parent or guardian.~~

~~(53) Nonprescription medication shall be administered to a child only with written daily request of parent or guardian.~~

~~(54)~~] The provider [~~caregiver~~] shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid;

(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020; and

(d) Maintain daily attendance records documenting the arrival and departure time of each child.

Section 11. Toilet and Diapering Requirements. (1) A toilet room shall:

(a) Have an adequate supply of toilet paper; and

(b) Be cleaned and sanitized daily.

(2) A sink shall be:

(a) Located in or immediately adjacent to toilets;

(b) Equipped with hot and cold running water that allows for hand washing.

(c) Equipped with hot water no more than 110 degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Immediately adjacent to a changing area used for infants and toddlers.

(3) Each toilet shall:

(a) Be kept in clean condition;

(b) Be kept in good repair;

(c) Be in a lighted room; and

(d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

(a) Emptied promptly; and

(b) Sanitized after each use.

(7) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered leak proof container temporarily; and

(c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(9) When a child is being diapered the child shall:

(a) Not be left unattended, and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of items not used for diaper changing.

(10) Unless prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(11) Staff shall disinfect the diapering surface after each child is diapered.

(12) If staff wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 12. Food Requirements. (1) The provider and assistant shall:

(a) Use sanitary procedures when preparing and serving food.

(b) Refrigerate perishable food and beverages; and

(c) Serve milk or milk products that are pasteurized.

(2) Meals shall

(a) Be served in an amount appropriate to the age of the child, and

(b) Include appropriate types of food according to the age of the child

(3) Breakfast shall include:

(a) Milk;

(b) Bread; and

(c) Fruit, vegetable, or 100 percent juice.

(4) A snack shall include two (2) of the following:

(a) Milk;

(b) Protein source;

(c) Fruit, vegetable, or 100 percent juice; or

(d) Bread.

(5) Lunch and dinner shall include:

(a) Milk;

(b) Protein source;

(c) Two (2) vegetables or one (1) fruit and one (1) vegetable; and

(d) Bread.

(6) A weekly menu shall be:

(a) Prepared;

(b) Dated,

(c) Posted in a conspicuous place;

(d) Kept on file for thirty (30) calendar days.

(7) Substitutions to a posted weekly menu shall be noted on the day the meal is served

(8) Unless provided as part of the fee for child care, an infant's formula shall be:

(a) Prepared;

(b) Labeled, and

(c) Provided by the parent.

(9) Each child's bottle shall be:

(a) Labeled;

(b) Covered, and

(c) Refrigerated.

Section 13. Medication and First Aid (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock

(2) Prescription medication shall not be administered to a child in care, without a daily written request of the parent.

(3) Nonprescription medication:

(a) May be given to a child only with the written daily request of the:

1. Parent; or

2. Person exercising custodial control of the child; and

(b) Shall be administered according to the instructions on the label.

(4) Medications shall be:

(a) Labeled; and

(b) Administered according to directions.

(5) The provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging

(6) First aid supplies shall include a fully-equipped first aid kit containing the following nonexpired items:

(a) Liquid soap,

(b) Adhesive bandages;

(c) Sterile gauze;

(d) Medical tape;

(e) Scissors;

(f) A thermometer;

(g) Flashlight;

(h) Cold pack;

(i) First-aid book;

(j) Disposable gloves; and

(k) A CPR mouthpiece.

Section 14 Animals (1) Animals shall be

(a) Supervised by an adult when in the presence of children in care; and

(b) Certified as properly inoculated against rabies.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) Animals that are considered wild or exotic shall not be allowed in a family child-care home.

Section 15 [~~12~~] Transportation. (1) If transportation is provided or arranged by the certified family child-care [~~child-care~~] home provider, the provider shall:

(a) Have written permission from a parent [~~or guardian~~] to transport his child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child

1. Be restrained in an appropriate safety seat meeting federal motor vehicle safety standards in 49 C F R. 571.213[~~individually seat belted~~],

2. Remain seated while the vehicle is in motion; and

3. If a child is under thirteen (13) years of age,[~~forty (40) inches in height.~~

~~a.~~] be transported in the back seat[~~; and~~

~~b. Restrained in a federally-approved motor vehicle safety seat in good repair~~];

(d) Have a valid driver's license issued by the Division of Motor Vehicles;

(e) Have emergency and identification information about each child in the vehicle if children are being transported; and

(f) Conform to state laws pertaining to vehicles, drivers license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended in a vehicle.

(3) The back of a pickup truck shall not be used to transport a child.

Section 16.[~~13.~~] Records. (1) A certified family child-care[~~child care~~] home provider shall maintain the confidentiality of a child's records.

(2) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(3) The provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(3).

(4) A certified family child-care home provider shall keep a written daily record of the times a child arrives and departs

(5) Certified family child-care home providers shall keep all records for five (5) years

Section 17.[~~14.~~] Certified Family Child-Care[~~Child Care~~] Home Program. The certified family child-care [~~child care~~] home provider shall:

(1) Develop written information that specifies the

(a) Rate for child care; [~~and~~]

(b) Expected frequency of payment for the program;

(c) Hours of operation; and

(d) Policy regarding:

1. Late fees;

2. Holidays;

3. Vacation;

4. Illness; and

5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care[~~child care~~] home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Allow a parent and the cabinet or its designee access to the family child-care home at any time a child is in care,[~~to visit and observe the program during the hours of operation; and~~]

(6) Communicate with each child's parent about the child's:

(a) Development;

(b) Activities;

(c) Likes; and

(d) Dislikes;

(7) Post in a prominent area in the home:

(a) The staff to child ratios described in Section 9 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(8) Coordinate at least one (1) annual activity involving parental or family participation; and

(9) Maintain a written child care agreement with each child's parent or custodian, including the name of each person designated by the parent to pick up the child.

Section 18.[~~15.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-RCC-4[~~DCC-178~~], Application for Certified Family Child Care Home" [~~Certification~~], edition 12/07 [~~11/03~~],

(b) "OIG-RCC-5 [~~DCC-180~~], Central Registry Check" [~~Child's Health and Emergency Information~~], edition 12/07[~~11/03~~]; [~~and~~]

(c) "OIG-RCC-6 [~~DCC-179~~], Self Check List", edition 12/07; and (d) "OIG-RCC-7, Request for Appeal", edition 12/07 [~~11/03~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Dearinger, (502) 564-3556, ext 4227

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by a certified family child-care home provider.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the issuance, monitoring, renewal, denial, revocation, and suspension of a certificate of operation, and to impose staff-to-child ratios for a family child-care home.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 199.8982(1)(f) to establish standards for the issuance, monitoring, denial, revocation, and suspension of a certificate of operation, impose staff-to-child ratios, and any other requirements necessary to ensure minimum safety in a family child-care home.

(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 statute by describing the requirements of the certification and renewal of certification processes, sanctions, suspension, and denial of certification, appeals processes, and standards for a provider and a provider's home where child care services are offered.

(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 will raise the minimum age required for assistants to 18; increase training and education requirements for providers and assistants; add an out-of-state background check for applicants residing outside of Kentucky within the past five (5) years; require zoning compliance; reduce liability coverage to $50,000 per occurrence; make additions to posting requirements; require one annual activity involving parental participation; clarify processes relating to responses to a statement of deficiency; revise time frames for informal dispute resolution; revise and clarify general requirements of the home and provider; and revise forms contained in material incorporated by reference. Also definitions are being added from 922 KAR 2:001, the definitions regulation for this chapter which is being repealed.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the health and safety of children cared for in a family child-care home, clarify processes related to deficiencies, and raise basic licensure standards to more closely reflect national norms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing requirements for issuance, monitoring, revocation, denial, and suspension of certificates to operate a family child-care home; and establishing minimum requirements to ensure the health, safety, and welfare of children cared for by certified family child care home providers.

(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 clarifying the requirements for the issuance of a certificate and ongoing operation of a family child-care home. The amendment clarifies procedures and responsibilities contained within the administrative regulation and makes technical requirements to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Data from the Office of the Inspector General, Division of Regulated Child Care, indicates as of August 9, 2007, there are 838 family child care home providers 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: This amendment will require family child-care home operators and assistants to obtain three hours of additional training per year and develop a written training plan, assure that the child care home meets local zoning ordinances, post additional documentation and develop written information addressing program activities and policies, ensure that assistants are 18 years old, and coordinate one activity involving parental or family participation per year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Training is available at no cost to the individual if they are

enrolled in the Commonwealth Child Care Credential Scholarship Program. For other participants, the costs average $3-$12 per hour for the additional hours depending on the region. These additional costs may be offset due to insurance requirements changing from $50,000 per child to $50,000 per occurrence, which should save regulated entities money. The cabinet currently contracts with Child Care Resource and Referral Agencies to provide training at low cost to the participants. Technical assistance provided by the Child Care Resource and Referral Agencies will be available to providers regarding the implementation of posting requirements, training plans, and coordination of parental participation activities. Monetary costs for these provisions to the family child care home operator are minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amendment, family child care home providers will improve the quality of services provided to children in their care and ensure minimum health and safety and health standards are met. These recommendations were developed with Department staff in response to the National Association of Child Care Resource and Referral Agencies (NACCRRA) report published in March 2007 that ranked Kentucky's standards for child care centers 49th in the nation.

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

(a) Initially: There will be no additional costs to the cabinet as a result of this amendment.

(b) On a continuing basis: There will be no additional costs to the cabinet as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional cost to the cabinet associated with this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funds or fees 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. There are fees established for child care licensure in KRS 199.896.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate.45 C.F.R. 98.2, 49 C.F.R. 571.213.

2. State compliance standards. KRS Chapter 13B, 17.165, 186.020, 199.011(2), 199.894(5), 199 896(18), 199 898, 199 8982, 214.036, 314.011(5), 600 020, 620 030. KRS 13B.170, 199.8982(1)(f)

3 Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2, 49 C.F.R. 571.213.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Community Based Services-Division of Child Care and the Office of the Inspector General-Division of Regulated Child Care are 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.45 C.F.R. 98.2, 49 C.F.R. 571.213, KRS Chapter 13B, 17.165, 186.020, 199.011(2), 199.894(5), 199.896(18), 199.898, 199.8982, 214.036, 314.011(5), 600.020, 620.030, 13B.170, 199.8982(1)(f).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate 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 revenue for the state or local government either for subsequent years.

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:110. Child-care center [~~Child care facility~~] provider requirements.

RELATES TO: KRS 17.165, 199 011(2), 199 894(3), 199.896(2), (10), (11), (15)-(20), 199.898, 214.010, 214.036, 314.011(5), 620.030, 45 C F.R. 98 2

STATUTORY AUTHORITY: KRS 194A 050(1), 199 896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199 896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child care centers. This administrative regulation establishes standards for child day care facilities.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199 011(2).

(2) "Child care" means care of a child in a center or home which regularly provides full or part-time care, day or night, and includes developmentally-appropriate play and learning activities.

(3) "Child-care center" is defined by KRS 199 894(3)

(4) "Director" means an individual who meets the education and training requirements as specified in Section 4 of this administrative regulation

(5) "Heath professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314 011(5) under the supervision of a physician

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means an individual, partnership, corporation, or other entity authorized to operate a child-care center.

(8) "Parent" is defined in 45 C.F.R. 98.2.

(9) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and a parent; or

(d) Other activity designed to engage a parent in the program's activities.

(10) "Premises" means the building and contiguous property in which child care is provided.

(11) "Qualified substitute" means a person who meets the requirements of a staff person as described in Section 5 of this administrative regulation.

(12) "School-age" means a child attending kindergarten, elementary, or secondary education.

(13) "Toddler" means a child between the age of twelve (12) and twenty-four (24) months.

(14) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee.

(15) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. General. (1) A licensee shall be responsible for the operation of the child-care center [~~child care facility~~] pursuant to this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(2) Child-care center [~~Child care facility~~] staff shall be:

(a) Instructed by the child-care center's [~~facility's~~] director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, [~~and~~] 922 KAR 2:090, and 922 KAR 2:120.

(3) Information concerning a child and the parent[~~, his parent, or person exercising custodial control~~] shall be kept in strict confidence by child-care center [~~child care facility~~] staff, except as otherwise required by law.

(4) A volunteer or board member shall comply with the policies and procedures of the child-care center [~~facility~~].

(5) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:090, Child-care center [~~Child care facility~~] licensure; [~~and~~]

c. 922 KAR 2:120, Child-care center [~~Child care facility~~] health and safety standards; and

d. This administrative regulation.

(6) An activity of a person living in a child-care center [~~child care facility~~] that is a dwelling unit shall not interfere with the child-care center [~~day care~~] program.

(7) In addition to the posting requirement of KRS 199.898(3), a child-care center [~~child care facility~~] shall post the following in a conspicuous place and make[,] available for public inspection:

(a) Each statement of deficiency and civil monetary penalty notice issued by the cabinet during the current licensure year;

(b) Each plan of correction submitted by the child-care center [~~facility~~] to the cabinet during the current licensure year;

(c) A description of services provided by the child-care center [~~facility~~], including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care.

(d) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(e) Daily schedule.

[~~(8) The director of a child care facility shall be responsible for the following:~~

~~(a) Development of a child care program that meets the requirements of this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120;~~

~~(b) Development of facility plans, policies and procedures;~~

~~(c) Supervision of staff conduct to ensure implementation of program policies and procedures at the facility;~~

~~(d) Scheduling of daily activities for the children;~~

~~(e) Conducting and managing staff meetings;~~

~~(f) Evaluating the instructional activity of each staff person;~~

~~(g) Assuring that additional staff are available during cooking and cleaning hours if necessary to maintain staff-to-child ratios pursuant to 922 KAR 2:120, Section 1;~~

~~(h) Providing for the health, safety and comfort of each child;~~

~~(i) Immediate notification of an accident or incident requiring medical treatment of a child to the:~~

~~1. Parent; or~~

~~2. Person exercising custodial control;~~

~~(j) Assurance that a new employee or new volunteer shall not be left alone with a child if the licensee has not received the results of the new employee or volunteer's:~~

~~1. Criminal records check conducted by the Justice and Public Safety Cabinet or Administrative Office of the Courts; and~~

~~2. Child abuse or neglect check conducted by the cabinet;~~

~~(k) Assurance that each mandatory record specified in Section 2 of this administrative regulation has not been altered or falsified; and~~

~~(l) Assuring that information and rights are posted in accordance with KRS 199.898.~~]

Section 3. [~~2.~~] Records. The following records shall be maintained at the child-care center [~~child care facility~~] for five (5) years:

(1) Sufficient records to:

(a) Identify each child enrolled in the child-care center; and [~~facility;~~]

(b) Enable the person in charge to contact each child's:

1. [~~Each child's~~] Parent [~~or person exercising custodial control~~] at:

a. Home; or

b. Place of employment; and

2. [~~The~~] Family physician; and

(c) Identify the name of each person designated in writing by the parent to pick up the child.

(2) Each child's medical history, along with authorization for emergency medical care, signed by the parent [~~or person exercising custodial control~~] and left with the child-care center [~~facility~~] director at the time of enrollment;

(3) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized pursuant to 902 KAR 2:060 shall be on file within thirty (30) days of enrollment;

(4) Permission forms for each trip off the premises signed by the parent [~~or person exercising custodial control~~];

(5) Daily attendance records documenting the arrival and departure time of each child;

(6) [~~For each staff person:~~

~~(a) A copy of the results of a negative tuberculin skin test prior to employment and every two (2) years thereafter; or~~

~~(b) A physician's statement prior to employment and every two (2) years thereafter documenting the individual is free from tuberculosis;~~

~~(7)~~] A written schedule of staff working hours;

(7) A [~~(8)~~] Written record of training participation for each child-care [~~child care~~] center staff person to include:

(a)[~~, including~~] The training source,[~~;~~]

(b) Location,[~~;~~]

(c) Date;[~~;~~] and

(d) Number of clock hours completed [~~obtained~~];

(8)[~~(9)~~] A written annual plan for child-care staff professional development,

(9)[~~(10)~~] A written record of quarterly, practiced earthquake and

tornado drills detailing the date, time, and children who participated;

(10)[(11)] A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated [in accordance with the Life Safety Code, incorporated by reference in 815 KAR 10.060];

(11)[(12)] A written plan and diagram outlining the course of action in the event of natural or manmade disaster, posted in a prominent place;

(12) For the director, employee, volunteer, or any person with supervisory or disciplinary control over, or having direct contact with a child,[(13)] results of the:

(a) Criminal records check in accordance with KRS 17.165;

(b) Child abuse and neglect check in accordance with 922 KAR 1:470, and

(c) Background check from:

1. Previous state of residence, if the individual has been a resident outside of Kentucky in the previous five (5) years; or

2. Current state of residence, if other than Kentucky [the and search by the cabinet for a substantiated incident of abuse or neglect of a child pursuant to KRS 199.896(19)]; and

(13)[(14)] A written record of reports to the cabinet required in Section 6(1)[4(1)] of this administrative regulation.

Section 4 Director Requirements and Responsibilities [3 Staff Requirements.] (1) Effective with the adoption of this administrative regulation, a director shall [A director of a Type I facility providing child care shall]:

(a) Be twenty-one (21) years of age;

(b) Have a high school diploma, [or] a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an on-site child care director, or director of multiple facilities, during the hours the child-care center [day care facility] is in operation, and

(d) Ensure compliance with 922 KAR 2:090, 922 KAR 2:120, and this administrative regulation;

(e) Manage the staff in their individual job descriptions;

(f) Develop child-care center plans, policies, and procedures;

(g) Supervise staff conduct to ensure implementation of program policies and procedures;

(h) Post a schedule of daily activities;

(i) Conduct, manage, and document in writing staff meetings;

(j) Evaluate in writing annually the instructional activity of each staff person;

(k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Provide for the health, safety, and comfort of each child;

(m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the:

1. Criminal records check required by KRS 199.896(19); and

2. Child abuse or neglect check in accordance with 922 KAR 1:470;

(o) Assure each mandatory record specified in Section 3 of this administrative regulation has not been altered or falsified; and

(p) Coordinate at least one (1) annual activity involving parental or family participation.

(2) The director of a Type I child-care center shall [and (d)] meet one (1) of the following educational requirements:

(a)[1.] Master's degree in Early Childhood Education and Development;

(b)[2.] Bachelor's degree in Early Childhood Education and Development;

(c)[3.] Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

(d)[4.] Associate degree in Early Childhood Education and Development;

(e)[5.] Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children in:

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child care program;

(g)[6.] Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1.[a.] A school-based program following Department of Education guidelines;

2.[b.] An early childhood development program (head start); or

3.[c.] A licensed or certified child-[day]care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or

(b) Meet two (2) of the following:

1 Have twelve (12) hours of orientation and child development training. [7 Diploma in Child Development Services from Kentucky Tech as a preschool teacher or director; or

8. Three (3) years of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An early childhood development program, such as Head Start; or

c. A licensed or certified child-day care program

(2) A director of a Type II facility providing child care shall meet the requirements for a Type I facility, or shall:

(a) Be twenty-one (21) years of age;

(b) Have a high school diploma or GED;

(c) Have twelve (12) hours of orientation and child development training;

(d) Not be employed in a position other than a child-care director during the hours the day care facility is in operation; and

(e) Meet one (1) of the following educational requirements

1 Certificate in child development services from Kentucky Tech or local school system, as a child-care assistant,]

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a A school-based program following Department of Education guidelines;

b. An Early childhood development program, such as Head Start; or

c. A licensed or certified child-[day]care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

[(3) A director of a licensed child care facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under subsections (1) and (2) of this section.]

Section 5 Staff Requirements (1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1 High school diploma;

2 GED or qualifying documentation from a comparable educational entity; or

3 Commonwealth Child Care Credential as described in 922 KAR 2:250

(b) Shall provide, prior to employment and every two years thereafter:

1. A statement from a health professional that the individual is

free of active tuberculosis: or

2. A copy of the results of a negative tuberculin skin test.

(2) A child-care center [~~(4) The following staff requirements shall apply to a child-care facility:~~

~~(a) Staff shall provide adequate supervision of each child in the care of the facility;~~

~~(b) A facility~~] shall not employ a person:

(a)[~~1.~~] Convicted of a crime as defined in KRS 17.165(5), or

(b)[~~2.~~] Found by the cabinet to have abused or neglected a child, pursuant to 922 KAR 1:470 [~~KRS 199.896(19);~~]

(3)[~~(c)~~] At least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training [~~agency with standards and training material acceptable to, and on file with, the cabinet;~~] in the following skills:

(a)[~~1.~~]Infant and child cardiopulmonary resuscitation; and

(b)[~~2.~~] Infant and child first aid.[~~;~~]

(4)[~~(d)~~] Infant and child cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15)[~~twelve (12)~~] clock hours requirement in subsection (14)[~~(13)~~] of this section.[~~;~~]

(5)[~~(e)~~] One (1) adult staff person shall be designated as being in charge. If the director is not present in the child-care center[~~child care facility~~], the designated staff person in charge shall carry out the duties of the director[~~;~~

~~(f) Child care staff shall practice good personal hygiene; and~~

~~(g) Child care staff shall wash their hands with liquid soap and running water:~~

~~1. After diapering or toileting each child; and~~

~~2. Immediately before feeding each child~~].

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; and

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7)[~~(5) In a type I facility, a minimum of two (2) qualified substitute staff persons shall be available in case of need. The licensee shall assure that:~~

~~(a)~~] Each qualified substitute staff person shall:

(a) Meet the [~~meets~~] staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation[~~Documentation required to verify a substitute's compliance with this administrative regulation is on file in the facility~~].

(8) A qualified substitute who[~~(6) If a qualified substitute~~] works in more than one (1) licensed child-care [~~child care~~] center [~~under different ownership, the substitute~~] shall provide the required documentation to verify compliance with this administrative regulation [~~present to each facility~~] at the time of employment with each child-care center.

(9)[~~: (a) Proof that the individual is free of tuberculosis;~~

~~(b) Documentation that the individual has met the annual training requirement; and~~

~~(c) A copy of the results of the individual's:~~

~~1. Criminal records check, conducted within the past year; and~~

~~2. Child abuse or neglect check, conducted within the past year.~~

~~(7) In a type II facility:~~

~~(a) At least one (1) qualified substitute staff person shall be available in case of need, or~~

~~(b)~~] If the operator of a Type II child-care center [~~facility~~] is unable to provide care in accordance with this administrative regulation, 922 KAR 2.090, or 922 KAR 2:120, the Type II child-care center[~~facility~~] shall close temporarily until the operator is able to resume compliance;

(10)[~~(8)~~] The minimum number of adult workers in a child-care center[~~child care facility~~] shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed[~~Each child receive adequate supervision~~];

(b) Each staff person under eighteen (18) years of age and each student trainee are[~~is~~] under the direct supervision of a qualified[~~permanent~~] staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18)[~~sixteen (16)~~] shall not be counted as staff for the staff-to-child ratio.

(11)[~~(9)~~] Except for medication prescribed by a physician, a controlled substance or alcohol use shall not be permitted on the premises during hours of operation.

[~~(10) Smoking shall:~~

~~(a) Be permitted only in designated areas; and~~

~~(b) Not be permitted in the presence of a child~~.]

(12)[~~(11)~~] Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2[~~1~~](11)(f).

(13)[~~(12)~~] For each adult residing at a child-care center [~~child care facility that is the full-time residence of a licensee~~], the results of the following shall be maintained on file at the center[~~facility~~]:

(a) Criminal records check indicating that the adult has not been convicted of a crime as defined in KRS 17.165(5);

(b) Child abuse and neglect checks in accordance with 922 KAR 1:470. [~~Search conducted by the cabinet~~] indicating that the adult has not been found by the cabinet to have abused or neglected a child; and

(c) A copy of the results of a negative tuberculosis skin test or a health professional's [~~physician's~~] statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide evidence of a negative tuberculosis skin or health professional's [~~physician's~~] statement documenting that the adult is free of tuberculosis.

(14)[~~(13)~~] A staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9)[~~Six (6)~~] hours cabinet-approved child development training within the first year of employment; and

(c) Fifteen (15)[~~Twelve (12)~~] hours of cabinet-approved [~~relevant~~] training during each subsequent year of employment.

Section 6 [~~4~~] Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery of:

(a) Communicable disease to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care [~~or results in death~~];

(c) An incident that results in legal action by or against the child-care center [~~child care facility~~] that affects a child or staff person; and

(d) An incident involving fire or other emergency.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee [~~change of director~~] shall report[~~be reported~~] to the cabinet within one (1) week:[~~-~~]

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirement of Section (4) of this administrative regulation.

(4) Written notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership;

(b) Change of location;

(c) Increase in capacity;

(d) Change in hours of operation;

(e) Change of services in the following categories:

1. Infant,

2. Toddler;

3. Two (2) years to school-age;

4. School-age,

5. Nontraditional hours [~~Nighttime care~~]; or

6. Transportation; or

(f) Addition to the square footage a child-care center's premises [~~of a room, wing, or building to a facility's usable space~~].

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6)[~~(5)~~] The cabinet and parent of a child enrolled in a child-care center[~~child care facility~~] shall receive notice as soon as practicable and prior to a child care center's[~~child care facility's~~] temporary or permanent closure.

MARK WASHINGTON, Commissioner
TOM EMBERTON, JR, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Deanger, (502) 564-3556, ext 4227

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the general requirements, records, director requirements and responsibilities, and staff requirements of child-care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 194A.050(1), which requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. 922 KAR 2:110 Child-care center provider requirements establishes the criteria for licensed child-care centers.

(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 statute by describing the requirements for operation of child-care center, records, director requirements and responsibilities, and staff requirements for child-care centers where child care services are offered.

(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 will add the definitions from 922 KAR 2:001; increase training and education requirements for staff; make additions to posting requirements; require one annual activity involving parental participation; clarify processes relating to responses to a statement of deficiency; revise time frames for informal dispute resolution; revise and clarify general requirements of the child-care center.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the health and safety of children cared for in a child-care center, clarify processes related to deficiencies, and raise basic licensure standards to more closely reflect national norms recommended by the National Association of Child Care Resource and Referral Agencies (NACCRRA) report published in March 2007 that ranked Kentucky's standards for child care centers 49th in the nation.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment conforms to the content of the authorizing statutes by establishing requirements for general necessities, records, director requirements and responsibilities, and staff requirements for child-care centers; and establishing minimum requirements to ensure the health, safety, and welfare of children cared for by child-care centers.

(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 clarifying the requirements for the issuance of a license and ongoing operation of a child-care center. The amendment clarifies procedures and responsibilities contained within the administrative regulation and makes technical requirements to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Data from the Office of the Inspector General, Division of Regulated Child Care, indicate as of August 9, 2007, that there are 2156 Type I child care centers and 131 Type II child care centers.

(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: This amendment will require child-care center operators and staff to obtain additional training per year, post additional documentation, and coordinate one activity involving parental or family participation per year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Training is available at no cost to the individual if they are enrolled in the Commonwealth Child Care Credential Scholarship Program. For other participants, the costs average $3-$12 per hour for the additional hours depending on the region. The cabinet currently contracts with Child Care Resource and Referral Agencies to provide training at low costs to the participants. Technical assistance provided by the Child Care Resource and Referral Agencies will be available to providers regarding the implementation of posting requirements, training plans, and coordination of parental participation activities. Monetary costs for these provisions to the child-care center operator and staff are minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amendment, child-care center providers will improve the quality of services provided to children in their care and ensure minimum health and safety and health standards are met.

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

(a) Initially: There will be no additional costs to the cabinet as a result of this amendment.

(b) On a continuing basis: There will be no additional costs to the cabinet as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? There are no costs to the Cabinet as a result of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There is no increase in funds or fees 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 licensure fees. There are fees established for child care licensure in KRS 199.896.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2

2. State compliance standards. KRS 17.165, 199 011(2), 199 894(3), 199 896(2), (10), (11), (15) to (20), 199.898, 214.010, 214 036, 314 011(5), 620.030, 194A.050(1), 199.896(2).

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2.What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services-Division of Child Care and the Office of the Inspector General-Division of Regulated Child Care 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. 45 C.F.R. 98.2, KRS 17.165, 199 011(2), 199 894(3), 199.896(2), (10), (11), (15) to (20),199.898, 214 010, 214.036, 314.011(5), 620.030, 194A 050(1), 199 896(2).

4.Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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 revenue for the state or local government either for subsequent years.

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:120. Child-child care center[~~care facility~~] health and safety standards.

RELATES TO: KRS 199 894, 199 896(2), (18), (19), 199.898, 211.350-211.380, 314.011(5), 620.030[~~(1)~~], 16 C.F.R 1508, 1509, 45 C.F.R. 98 2, 49 C F R. 571 213

STATUTORY AUTHORITY: KRS 194A.050(1), 199 896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, quality for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199 896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care [~~child care~~] centers This administrative regulation establishes health and safety standards for child-care centers [~~day care facilities~~].

Section 1. Definitions (1) "Adequate supervision" means that qualified staff devotes full-time attention to a child in care and ensures the child is within scope of vision and range of voice.

(2) "Cabinet" is defined by KRS 199 894.

(3) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:110, Section 4;

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:110, and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(4) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314 011(5) under the supervision of a physician

(5) "Infant" means a child who is less than twelve (12) months of age

(6) "Licensee" means an individual, partnership, corporation, or other entity authorized to operate a child-care center

(7) "Nontraditional hours" means the hours of

(a) 6 p m through 6 a m., Monday through Friday; or

(b) 6 p m. on Friday until 6 a m. on Monday

(8) "Parent" is defined in 45 C.F R 98 2

(9) "Premises" means the building and contiguous property in which child care is provided

(10) "Protective surface" means loose surfacing material not installed over concrete which includes the following:

(a) Wood mulch,

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand,

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three (3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee.

(11) "Related" means grandchildren, nieces, nephews, or children in legal custody of the operator of the child-care center

(12) "School-age" means a child enrolled in kindergarten, elementary, or secondary education.

(13) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months

(14) "Type I child-care center" is a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee.

(15) "Type II child-care center" is the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler	1 staff for 6 children	12
2 to 3 years	1 staff for 10 children	20

3 to 4 years	1 staff for 12 children	24
4 to 5 years	1 staff for 14 children	28
5 to 7 years	1 staff for 15 children	30
7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30

*Maximum Group Size is applicable only to Type I centers

(a) In a Type I center, a group shall:

1. Be separately maintained in a defined area unique to the group; and

2. Have specific staff assigned to, and responsible for, the group

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and

2 Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:

1 Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) to six (6) years; and

2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child care program that assures each child will be:

1. Provided adequate supervision at all times; and

2 Protected from abuse or neglect

(b) The program shall include:

1. A procedure to inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect, as required by KRS 620 030; and

2 Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program of activities:

(a) Posted in writing in a conspicuous location with each age group and followed;

(b) Geared to the individual needs and developmental levels of each child served.

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being;

(d) That offers a variety of creative activities including the following:

1 Art;

2 Music;

3 Dramatic play;

4. Stories and books;

5. Science.

6. Block building;

7. Tactile activity;

8. Culture;

9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

a Have some free choice of activities;

b. If desired, play apart from the group at times; and

c Practice developmentally-appropriate self-help procedures in respect to:

(i) Clothing;

(ii) Toileting;

(iii) Hand-washing; and

(iv) Eating; and

12. Use of electronic viewing and listening devices if the:

a Material is appropriate to the child using the equipment;

b Material does not include any violence, adult content viewing, or inappropriate language;

c Viewing or listening is limited to two (2) hours per day.

d. Viewing or listening is discussed with parents prior to viewing or listening; and

e. Viewing or listening is designed as an educational tool

(5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities

(6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.

(8) A child shall not be required to stand or sit for a prolonged period of time:

(a) During an activity;

(b) While waiting for an activity to start; or

(c) As punishment.

(9) If school-age care is provided

(a) A separate area or room shall be provided in a Type I center; and

(b) Each child shall be provided a snack after school

(10) A child shall not be subjected to

(a) Corporal physical discipline pursuant to KRS 199.896(18);

(b) Loud, profane, threatening, frightening, or abusive language; or

(c) Discipline that is associated with:

1. Rest,

2. Toileting; or

3 Food.

(11) If nontraditional hours of care are provided:

(a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room.

(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity geared to the child's age level and developmental needs;

(d) A child sleeping three (3) hours or more shall sleep in:

1. Pajamas; or

2. A nightgown;

(e) If a child attends school from the child-care center, the child shall be offered breakfast; and

(f) Staff shall,

1. If employed by a Type I center, remain awake while on duty; or

2. If employed by or is the operator of a Type II center, remain awake until every child in care is asleep.

Section 3 General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described Section 2(4)(d)

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness; and

(b) Wash their hands with liquid soap and warm running water:

1. Upon arrival at the center;

2. Before and after eating or handling food.

3. After toileting or diaper change;

4. After handling animals;

5. After wiping or blowing nose;

6. After touching items soiled with body fluids or wastes; and

7. After outdoor or indoor play time

(5) Staff shall:

(a) Maintain personal cleanliness;

(b) Conform to hygienic practices while on duty; and

(c) Wash their hands with liquid soap and running water;

1. Upon arrival at the center;
2. After toileting or assisting a child in toileting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication; and
9. If possible, before administering first aid.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

(7) The following shall be inaccessible to a child in care:

(a) Toxic cleaning supplies, poisons, and insecticides;

(b) Knives and sharp objects;

(c) Matches, cigarettes, lighters, and flammable liquids;

(d) Plastic bags;

(e) Litter and rubbish;

(f) Bar soap; and

(g) Personal belongings of staff.

(8) Guns and ammunition shall be stored separately in a locked area outside of the designated child care area.

(9) Smoking shall:

(a) Be permitted in accordance with local ordinances;

(b) Be allowed only in outside designated areas; and

(c) Not be permitted in the presence of a child.

(10) While bottle feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;
2. Left in the mouth of a sleeping infant, or
3. Heated in a microwave.

(11) Except for an infant, toddler, or a child who attends nontraditional hours of care, a child shall have rest periods not to exceed two (2) hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period specific to the needs of the child.

(12) Staff in a child-care center shall follow the most current policy of the American Academy of Pediatrics when placing a child to sleep.

Section 4. Premises Requirements. (1) The premises shall be:

(a) Suitable for the purpose intended;

(b) Kept clean and in good repair; and

(c) Equipped with a land-line telephone accessible to a room used by a child.

(2) A child-care center shall be in compliance with the State Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) The building shall be constructed to ensure the:

(a) Building is:

1. Dry;
2. Adequately heated;
3. Ventilated; and
4. Well lit, including clean light fixtures:
   a. That are in good repair in all areas; and
   b. Shielded or have shattered proof bulbs installed;

(b) Following are protected:

1. Windows;
2. Doors;
3. Stoves;
4. Heaters;
5. Furnaces;
6. Pipes; and
7. Stairs.

(5) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(6) Measures shall be utilized to control the presence of:

(a) Rodents;

(b) Flies;

(c) Roaches; and

(d) Other vermin.

(7) An opening to the outside shall be effectively protected against the entrance of vermin by:

(a) Self-closing doors;

(b) Closed windows;

(c) Screening;

(d) Controlled air current; or

(e) Other effective means.

(8) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(9) The water supply shall be:

(a) Properly located;

(b) Protected from contamination;

(c) Adequate in volume; and

(d) Obtained from a source approved by the local health department.

(10) Groundwater supplies for a center caring for:

(a) More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Cabinet for Environmental and Public Protection; or
2. Local health department.

(11) Sewage shall be properly disposed by a method approved by the:

(a) Cabinet for Environmental and Public Protection; or

(b) Cabinet.

(12) If the adequacy of the plumbing is questioned, consultation shall be sought from the:

(a) Cabinet for Environmental and Public Protection; or

(b) Local sanitarian having jurisdiction over the child-care center.

(13) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.

(14) If a portion of the building is used for a purpose other than child care, necessary provisions shall be made to avoid interference with the child care program.

(15) The temperature of the inside area of the premises shall be:

(a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or

(b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.

(16) A kitchen shall not be required if:

(a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(17) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(18) An outdoor play area shall be:

(a) Except for an after-school child care program, located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (5) of this section;

(c) Free from:

1. Litter;
2. Glass;
3. Rubbish; and
4. Flammable materials;

(d) Safe from foreseeable hazard;

(e) Well drained;

(f) Well maintained;

(g) In good repair; and

(h) Visible to staff at all times.

(19) A protective surface shall:

(a) Be provided for outdoor play equipment used to:

1. Climb;

2. Swing; and
3. Slide; and
(b) Have a fall zone equal to the height of the equipment.
(20) If a child-care center does not have access to an outdoor play area, an indoor space shall:
(a) Be used as a play area;
(b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (5) of this section;
(c) Include equipment for gross motor skills;
(d) Be well-ventilated;
(e) Be heated, and
(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.
(21) Fences shall be:
(a) Constructed of safe material,
(b) Stable; and
(c) In good condition.
(22) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.
(23) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.
(24) A sandbox shall be:
(a) Constructed to allow for drainage;
(b) Covered when not in use;
(c) Kept clean; and
(d) Checked for vermin prior to use.
(25) Bodies of water that shall not be utilized include:
(a) Portable wading pools;
(b) Natural bodies of water; and
(c) Unfiltered, nondisinfected containers.
(26) A child-care center shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.
(27) Storage space shall be provided:
(a) In the form of low open shelves accessible to the children, and
(b) In sufficient quantity for each child's clothing.
(28) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:
(a) Be separate from an area used by an older child;
(b) Not be an exit or entrance; and
(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.
(2) An infant or toddler may participate in an activity with an older child for no more than one (1) hour.
(3) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:
(a) Shaded; and
(b) A separate area or scheduled at a different time than an older child.

Section 6. Sleeping and Napping Equipment. (1) An individual cot, crib, baby bed, or two (2) inch thick waterproof mat shall be provided for a child in attendance for more than three and one-half (3 1/2) hours per day.
(2) A crib shall:
(a) Be equipped with a firm, comfortable waterproof mattress; and
(b) Meet the standards set forth in 16 C.F.R. 1508 and 1509.
(3) Individual sheets and covers shall be:
(a) Provided for a child;
(b) Laundered a minimum of once per week or more often, if necessary; and
(c) Stored in a sanitary manner.
(4) If cots or mats are used, floors shall be free from:
(a) Drafts;
(b) Liquid substances,
(c) Dirt; and
(d) Dampness.
(5) A cot, other equipment, and furnishings shall be spaced twelve (12) inches apart to allow free and safe movement by a person.
(6) A tiered crib shall not be used.
(7) Cots or mats not labeled for individual use by a child shall be sanitized after each use.
(8) Cots or mats shall not be ripped or torn.

Section 7. First Aid and Medicine. (1) First aid supplies shall:
(a) Be available to provide prompt and proper first aid treatment;
(b) Be stored out of reach of a child;
(c) Be periodically inventoried to ensure the supplies are current;
(d) If reusable, be
1. Sanitized; and
2. Maintained in a sanitary manner; and
(e) Include:
1. Liquid soap;
2. Adhesive bandages;
3. Sterile gauze;
4. Medical tape;
5. Scissors;
6. A thermometer;
7. Flashlight;
8. Cold pack;
9. First aid book;
10. Disposable gloves; and
11. A cardiopulmonary resuscitation mouthpiece protector.
(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child care program.
(3) If a child becomes ill while at the center:
(a) The child shall be placed in a supervised area isolated from the rest of the children;
(b) The parent or person exercising custodial control shall be contacted immediately; and
(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.
(4) Prescription medication shall not be administered to a child in care, without a daily written request of the parent.
(5) Nonprescription medication:
(a) May be given to a child only with the written daily request of the:
1. Parent; or
2. Person exercising custodial control of the child, and
(b) Shall be administered according to the instructions on the label.
(6) The child-care center shall keep a written record of the administration of medication, including:
(a) Time;
(b) Date;
(c) Amount, and
(d) Name of staff person giving the medication.
(7) Medication, including refrigerated medication, shall be:
(a) Stored in a separate and locked place, out of the reach of a child,
(b) Kept in the original bottle; and
(c) Properly labeled.
(8) Medication shall not be given to a child if the expiration date on the bottle has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:
(a) Be clean;
(b) Be equipped for the proper:
1. Preservation;
2. Storage;
3. Preparation; and
4. Serving of food,
(c) Be adequately ventilated to the outside air; and
(d) Except in a Type II center when a meal is not being prepared, not be used for the activity of a child.
(2) A center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regula-

tion

(3) A child shall be:

(a) Seated with sufficient room to manage food and tableware; and

(b) Supplied with individual eating utensils designed for use by a child.

(4) Convenient and suitable sanitized utensils shall be:

(a) Provided; and

(b) Used to minimize handling of food during preparation

(5) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

(a) Have an indicating thermometer or other appropriate temperature measuring device;

(b) Be in a safe environment for preservation; and

(c) Be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above.

(6) Except when being thawed for preparation or use, frozen food shall be:

(a) Kept at a temperature of zero degrees Fahrenheit or below; and

(b) If potentially hazardous:

1. Thawed at refrigerator temperatures;

2. Thawed under cool, potable running water;

3. Quick thawed as part of the cooking process; or

4. Thawed by another method satisfactory to the health authority.

(7) Equipment, utensils, and surfaces contacting food shall be:

(a) Smooth;

(b) Free of breaks, open seams, cracks, and chips;

(c) Accessible for cleaning; and

(d) Nontoxic

(8) The following shall be clean and sanitary:

(a) Eating and drinking utensils;

(b) Kitchenware;

(c) Food contact surfaces of equipment;

(d) Food storage utensils;

(e) Cooking surfaces of equipment; and

(f) Nonfood contact surfaces of equipment.

(9) A single-service article shall be:

(a) Stored,

(b) Handled and dispensed in a sanitary manner; and

(c) Used only once.

(10) Bottles shall be:

(a) Individually labeled;

(b) Promptly refrigerated; and

(c) Covered when not in use

Section 9. Food Requirements. (1) There shall be at least a two (2) hour lapse, but no longer than three (3) hours lapse, between each meal or snack.

(2) A child present at meal or snack time shall be served.

(3) The child-care center shall serve:

(a)1. Breakfast; or

2. A mid-morning snack;

(b) Lunch;

(c) A mid-afternoon snack; and

(d) If appropriate, dinner.

(4) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Posted in advance in a conspicuous place;

(d) Kept on file for thirty (30) days; and

(e) Substitutions to a posted weekly menu shall be noted on the day the meal is served.

(5) Breakfast shall include:

(a) Milk;

(b) Bread; and

(c)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(6) A snack shall include two (2) of the following:

(a) Milk;

(b) Protein;

(c) Bread; or

(d)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(7) Lunch and dinner shall include:

(a) Milk;

(b) Protein;

(c) Bread; and

(d)1. Two (2) vegetables; or

2. A fruit and one (1) vegetable.

(8) Food shall be:

(a) Clean;

(b) Free from:

1. Spoilage;

2. Adulteration; and

3. Misbranding;

(c) Safe for human consumption;

(d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;

(e) Obtained from a source that is in compliance with applicable state and local law;

(f) Acceptable if from an established commercial food store;

(g) Served in a quantity reflecting the developmental stage of the child with additional portions provided upon request of the child; and

(h) Protected against contamination from:

1. Dust;

2. Flies;

3. Rodents and other vermin;

4. Unclean utensils and work surfaces;

5. Unnecessary handling;

6. Coughs and sneezes;

7. Flooding;

8. Drainage; and

9. Overhead leakage.

(9) Food shall be stored on.

(a) Clean racks;

(b) Clean shelves;

(c) Other clean surfaces; or

(d) If maintained in a sanitary condition, food in nonabsorbent containers may be stored on the floor.

(10) Fruits and vegetables shall be washed before cooking or serving.

(11) Meat salads, poultry salads, and cream filled pastries shall be:

(a) Prepared with utensils that are clean, and

(b) Unless served immediately, refrigerated pending service.

(12) An individual portion of food served to a child or adult shall not be served again.

(13) Wrapped food that is still wholesome and has not been unwrapped may be reserved

(14) Drinking water shall be freely available to a child.

(15) A center may participate in the Child and Adult Care Food Program (CACFP) or provide formula to the child.

(16) A parent who provides formula or breast milk to the center for the child shall prepare the liquid and label its container.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

(2) A toilet room shall:

(a)1. Be provided for each gender; or

2. A plan shall be implemented to use the same toilet room at separate times;

(b) Have a supply of toilet paper; and

(c) Be cleaned and sanitized daily.

(3) A sink shall be.

(a) Located in or immediately adjacent to toilet rooms;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water no more than 110 degrees Fahrenheit;

(d) Equipped with liquid soap and single use disposable hand drying material;
(e) Equipped with an easily cleanable, covered waste receptacle, and
(f) Immediately adjacent to a changing area used for infants and toddlers.
(4) Each toilet shall:
(a) Be kept in clean condition;
(b) Be kept in good repair;
(c) Be in a lighted room; and
(d) Have ventilation to outside air.
(5) Toilet training shall be coordinated with the child's parent.
(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
(7) If a toilet training chair is used, the chair shall be:
(a) Emptied promptly; and
(b) Sanitized after each use.
(8) Diapers or clothing shall be:
(a) Changed when soiled or wet;
(b) Stored in a covered container temporarily; and
(c) Washed or disposed of at least once a day.
(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
(10) When a child is diapered, the child shall:
(a) Not be left unattended, and
(b) Be placed on a surface that is:
1. Clean;
2. Padded;
3. Free of holes, rips, tears, or other damage;
4. Nonabsorbent;
5. Easily cleaned; and
6. Free of any items not used for diaper changing.
(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
(12) Staff shall disinfect the diapering surface after each child is diapered, disposed after each child is diapered.
(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
(a) Individually stored in separate containers; and
(b) Plainly labeled with the child's name.
(15) Toothbrushes shall be:
(a) Individually identified;
(b) Allowed to air dry; and
(c) Protected from contamination.
(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface such as waxed paper to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys, equipment, and furniture contacted by a child shall be:
(a) Kept clean and in good repair and
(b) Free of peeling, flaking, or chalking paint.
(2) Indoor and outdoor equipment shall:
(a) Be clean, safe, and in good repair;
(b) Meet the physical, developmental needs, and interests of children of different age groups;
(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint, and
(d) Be designed to guard against entrapment or situations that may cause strangulation.
(3) Toys shall be:
(a) Used according to the manufacturer's safety specifications;
(b) Durable; and
(c) Without sharp points or edges.
(4) Toys and other items that are considered mouth contact surfaces by a child not toilet trained shall be sanitized daily by:
(a) Scrubbing in warm, soapy water using a brush to reach into crevices;
(b) Rinsing in clean water;
(c) Submerging in a sanitizing solution for at least two (2) minutes; and
(d) Air dried.
(5) Tables and chairs shall be of suitable size for children.
(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document conformance to federal and state law pertaining to:
(a) Vehicles;
(b) Drivers; and
(c) Insurance.
(2) A center providing or arranging transportation service shall:
(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;
(b) Have a written plan; and
(c) Have written policies and procedures, including emergency procedures practiced monthly by staff that transport children.
(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:
(a) Type of transportation offered;
(b) Type of vehicle used for transportation;
(c) Plan for ensuring staff perform duties relating to transportation properly;
(d) Full insurance coverage for each vehicle;
(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;
(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and
(g) Safety procedures for:
1. Transporting a child;
2. Loading and unloading a child; and
3. Providing adequate supervision of a child.
(4) A vehicle used to transport children shall be equipped with:
(a) A fire extinguisher;
(b) First aid supplies as described in Section 7 of this administrative regulation;
(c) Emergency reflective triangles; and
(d) A device to cut the restraint system, if necessary.
(5) Transportation provided by licensed public transportation or a school bus shall:
(a) Meet Transportation Cabinet safety inspection requirements; and
(b) Comply with subsections (1) and (2) of this section.
(6) A vehicle used to transport children shall meet the following requirements:
(a) A twelve (12) or more passenger vehicle shall display a current certification of inspection from the Transportation Cabinet on the designated window.
(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:
1. Signal lamps;
2. Identifying colors; and
3. Cautionary words.
(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.
(d) A vehicle shall not transport children and hazardous materials at the same time.
(7) The appropriate car safety seat meeting federal motor vehicle safety standards in 49 C.F.R. 571.213 shall be used for each child.
(8) A daily inspection of the vehicle shall be performed and documented for the following:
(a) Tires;
(b) Lights, signals, mirrors, gauges, and wiper blades;
(c) Safety restraints;
(d) Fuel; and
(e) Free of debris.
(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.
(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).
(10) Each child shall:
(a) Have a seat;
(b) Be individually belted or harnessed in the seat; and
(c) Remain seated while the vehicle is in motion.

(11) A child shall not be left:

(a) Unattended at the site of aftercare delivery; and

(b) Unattended in a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) A vehicle shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off,

(b) Keys removed; and

(c) Emergency brake set.

(17) Transportation services provided shall:

(a) Be recorded in writing and include:

1. The first and last name of the child transported; and

2. The time each child gets on and the time each child gets off;

(b) Be completed by a staff member other than the driver; and

(c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

(a) Be at least twenty one (21) years old;

(b) Complete the background checks as described in 922 KAR 2:110;

(c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years;

(d) Not have had any convictions concerning vehicle operation in the past twelve (12) months; and

(e) Not caused an accident which resulted in the death of a person.

(19) Guns, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

Section 12. Animals. (1) Animals shall be:

(a) Supervised by an adult when in the presence of a child in care; and

(b) Certified as properly inoculated against rabies.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) Except when used as planned program activity in the control of an animal specialist, an animal that is considered wild or exotic shall not be allowed at a child-care center. [~~Child Care Services. (1) Minimum staff-to-child ratios and group size for an operating child care facility shall be maintained as follows:~~

~~Age of Children~~	~~Ratio~~	~~Maximum Group Size*~~
~~Birth - 1 year~~	~~1 staff for 5 children~~	~~10~~
~~1 to 2 years~~	~~1 staff for 6 children~~	~~12~~
~~2 to 3 years~~	~~1 staff for 10 children~~	~~20~~
~~3 to 4 years~~	~~1 staff for 12 children~~	~~24~~
~~4 to 5 years~~	~~1 staff for 14 children~~	~~28~~
~~5 to 7 years~~	~~1 staff for 15 children~~	~~30~~
~~7 and older~~	~~1 staff for 25 children (for before and after school)~~	~~30~~
	~~1 staff for 20 children (for full day of care)~~	~~30~~

~~*Maximum Group Size is applicable only to Type I facilities.~~

~~(a) In a Type I facility, a group shall:~~

~~1. Be separately maintained in a defined area unique to the group, and~~

~~2. Have specific staff assigned to and responsible for the group.~~

~~(b) The age of the youngest child in the group shall determine the:~~

~~1. Staff-to-child ratio; and~~

~~2. Maximum group size.~~

~~(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a facility:~~

~~1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) to six (6) years, and~~

~~2. Accredited by or affiliated with a nationally recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.~~

~~(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the facility, the child shall be included in the staff-to-child ratio.~~

~~(2) Each facility shall maintain a child care program that assures each child will be:~~

~~(a) Adequately supervised, and~~

~~(b) Protected from abuse or neglect. The program shall include:~~

~~1. A procedure to inform facility staff of the laws of the Commonwealth pertaining to child abuse or neglect, as required by KRS 620.030, and~~

~~2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child care facility staff member.~~

~~3) The facility shall provide a planned program of activities:~~

~~(a) Geared to the individual needs and developmental levels of each child served;~~

~~(b) That provide experiences to promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and shall provide a variety of creative activities, that may include the following:~~

~~1. Art;~~

~~2. Music;~~

~~3. Dramatic play;~~

~~4. Stories and books;~~

~~5. Science;~~

~~6. Block building;~~

~~7. Tactile activity;~~

~~8. Indoor or outdoor play in which a child makes use of both small and large muscles;~~

~~9. A balance of active and quiet play, including group and individual activity; and~~

~~10. An opportunity for a child to:~~

~~a. Have some free choice of activities;~~

~~b. If desired, play apart from the group at times; and~~

~~c. Practice developmentally appropriate self-help procedures in respect to:~~

~~(i) Clothing;~~

~~(ii) Toileting;~~

~~(iii) Handwashing; and~~

~~(iv) Eating.~~

~~(4) Activity areas, equipment, and materials shall be arranged so that the child's activity is visible to the supervising staff.~~

~~(5) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.~~

~~(6) Sufficient time shall be allowed for an activity so that a child may progress at his own developmental rate.~~

~~(7) A child shall not be required to stand or sit for a prolonged period of time:~~

~~(a) During an activity;~~

~~(b) While waiting for an activity to start; or~~

~~(c) As punishment.~~

~~(8) Television or video viewing by a child shall be limited to program related areas.~~

~~(9) If school-age care is provided:~~

~~(a) A Separate area or room shall be provided in a Type I facility;~~

~~(b) Each child shall be provided a snack after school; and~~

~~(c) A separate toilet facility shall be provided for each gender; or~~

~~(d) A plan shall be implemented to use the same toilet facility at separate times.~~

~~(10) A child shall not be subjected to:~~

~~(a) Corporal physical discipline, as prohibited by KRS 199.896(18);~~

~~(b) Loud, profane, threatening, frightening, or abusive language; or~~

~~(c) Discipline that is associated with:~~

~~1. Rest;~~

~~2. Toileting; or~~

~~3. Food.~~

~~(11) If nighttime care is provided:~~

~~(a) A child shall not be permitted to spend more than sixteen (16)~~

~~hours in the facility during one (1) twenty-four (24) hour period. Time spent in school shall be included in the sixteen (16) hour limit for a school-age child served by the child care facility.~~

~~(b) At least one (1) staff member:~~

~~1. Shall be assigned responsibility; and~~

~~2. Provide adequate supervision for each sleeping room;~~

~~(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity geared to the child's age level and developmental needs.~~

~~(d) A child sleeping three (3) hours or more shall sleep in:~~

~~1. Pajamas; or~~

~~2. A nightgown;~~

~~(e) If a child attends school from the facility, the child shall be offered breakfast.~~

~~(f) Staff shall:~~

~~1. If employed by a Type I facility, remain awake while on duty, or~~

~~2. If employed by or is the operator of a Type II facility, remain awake until every child in care is asleep.~~

~~Section 2. Health and First Aid. The needs of a child shall be met as follows:~~

~~(1) First aid supplies shall:~~

~~(a) Be available to provide prompt and proper first aid treatment;~~

~~(b) Be stored out of reach of a child;~~

~~(c) Be periodically inventoried to ensure the supplies are current;~~

~~(d) If reusable, be:~~

~~1. Sanitized, and~~

~~2. Maintained in a sanitary manner;~~

~~(e) Include:~~

~~1. Liquid soap;~~

~~2. Adhesive bandages;~~

~~3. Sterile gauze;~~

~~4. Medical tape;~~

~~5. Scissors;~~

~~6. A thermometer;~~

~~7. Flashlight;~~

~~8. Cold pack;~~

~~9. First aid book;~~

~~10. Disposable gloves; and~~

~~11. A cardiopulmonary resuscitation mouthpiece protector.~~

~~(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child care program. If a child becomes ill during the day:~~

~~(a) The child shall be placed in a supervised area isolated from the rest of the children;~~

~~(b) The parent or person exercising custodial control shall be contacted immediately; and~~

~~(c) Arrangements shall be made to remove the child from the child care facility as soon as practicable.~~

~~(3) Except as authorized in writing by a licensed physician and with written daily request of the parent or person exercising custodial control, prescription medication or aspirin shall not be given to a child.~~

~~(4) Nonprescription medication:~~

~~(a) May be given to a child only with the written daily request of the:~~

~~1. Parent; or~~

~~2. Person exercising custodial control of the child;~~

~~(b) Shall be administered according to the instructions on the label.~~

~~(5) The child care facility shall keep a written record of the administration of medication, including:~~

~~(a) Time;~~

~~(b) Date;~~

~~(c) Amount; and~~

~~(d) Name of staff person giving the medication.~~

~~(6) Medication, including refrigerated medication, shall be:~~

~~(a) Stored in a separate, locked place, out of the reach of a child;~~

~~(b) Kept in the original bottle; and~~

~~(c) Properly labeled.~~

~~(7) Medication shall not be given to a child if the expiration date on the bottle has passed.~~

~~(8) A child shall be helped with personal care and cleanliness.~~

~~(9) A child shall wash his hands with liquid soap and running water:~~

~~(a) Before eating or handling food; and~~

~~(b) After toileting.~~

~~(10) Staff shall insure that diapering and toilet training is a relaxed, pleasant activity. Toilet training shall be coordinated with a parent or person exercising custodial control of the child.~~

~~(11) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.~~

~~(12) Soiled diapers or wet clothing shall be:~~

~~(a) Changed promptly;~~

~~(b) Stored in a covered container temporarily; and~~

~~(c) Washed or disposed of at least once a day.~~

~~(13) When a child is diapered:~~

~~(a) The child shall be placed on:~~

~~1. A clean washable surface, or~~

~~2. Surface with a disposable covering;~~

~~(b) Individual sanitized washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks, unless otherwise prescribed by a physician;~~

~~(c) Staff shall disinfect the surface after each child is diapered;~~

~~(d) If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered; and~~

~~(e) Staff shall wash their hands with liquid soap and running water after diapering each child.~~

~~(14) If a training chair is used, the chair shall be:~~

~~(a) Emptied promptly; and~~

~~(b) Sanitized after each use.~~

~~(15) An infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that:~~

~~(a) Participates in the Child and Adult Care Food Program (CACFP), or~~

~~(b) Provides formula as a fringe benefit to the parent.~~

~~(16) Bottles shall be:~~

~~(a) Individually labeled;~~

~~(b) Promptly refrigerated; and~~

~~(c) Covered when not in use.~~

~~(17) A child shall not be fed with a propped bottle.~~

~~(18) Except for an infant or toddler or if the child attends nighttime or extended hours care, a child shall have rest periods not to exceed two (2) hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period specific to the needs of the child.~~

~~(19) Drinking water shall be freely available to a child and an individual drinking cup shall be provided.~~

~~(20) Toilet articles like combs, towels or washcloths, brushes and toothbrushes used by a child shall be individual, stored so as to not touch each other, and plainly marked.~~

~~(21) A child present at meal or snack time shall be served.~~

~~(22) The child care facility shall serve:~~

~~(a) Breakfast, or~~

~~(b) A midmorning snack;~~

~~(c) Lunch, and~~

~~(d) A midafternoon snack; and~~

~~(e) If appropriate, dinner.~~

~~(23) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between each meal or snack.~~

~~(24) Food shall be served in a quantity reflecting the developmental stage of the child. Additional portions shall be provided upon request by the child.~~

~~(25) Food requirements shall be as follows:~~

~~(a) Breakfast shall include:~~

~~1. Milk;~~

~~2. Bread; and~~

~~3. Fruit, or~~

~~4. Vegetable; or~~

~~5. 100 percent juice.~~

~~(b) A snack shall include two (2) of the following:~~

~~1. Milk;~~

~~2. Protein;~~

~~3. Fruit or vegetable or 100 percent juice; or~~

~~4. Bread.~~

~~(c) Lunch and dinner shall include:~~

~~1. Milk;~~

~~2. Protein;~~

~~3. Two (2) vegetables or a fruit and one (1) vegetable; and~~

~~4. Bread.~~

~~(26) If a parent chooses to provide food for his child's meal or~~

~~snack, or if food is catered, and the food does not meet the nutritional requirements listed in subsection (25) of this section, the facility shall provide additional food that is approved by the parent or person exercising custodial control and necessary to meet the requirements of subsection (25) of this section.~~

~~(27) During each meal:~~

~~(a) A child shall be seated with sufficient room to manage food and tableware; and~~

~~(b) An adult shall be present.~~

~~(28) Individual eating utensils shall be of size or designed for use by a child.~~

~~(29) A weekly menu shall be:~~

~~(a) Prepared;~~

~~(b) Dated,~~

~~(c) Posted in advance in a conspicuous place;~~

~~(d) Kept on file for thirty (30) days; and~~

~~(e) If a substitution is made, the change shall be noted on the menu the day of the meal service.~~

~~Section 3. Health and Sanitation. If a facility is required to have a food service permit, the facility shall be in compliance with 902 KAR 45:005, Food service code, and this section.~~

~~(1) A facility that serves a meal shall have:~~

~~(a) A three (3) compartment sink or similar equipment, and~~

~~(b) Procedures approved by the cabinet for washing and sanitizing dishes, silverware and cooking utensils after use.~~

~~(2) Food shall be:~~

~~(a) Clean;~~

~~(b) Free from:~~

~~1. Spoilage;~~

~~2. Adulteration; and~~

~~3. Misbranding;~~

~~(c) Safe for human consumption;~~

~~(d) Withheld from service or discarded, if the food is hermetically sealed, nonacidic or low-acidic food that has been processed in a place other than a commercial food processing establishment,~~

~~(e) Obtained from a source that is in compliance with applicable state and local law,~~

~~(f) Acceptable if from an established commercial food store,~~

~~(g) Protected against contamination from:~~

~~1. Dust;~~

~~2. Flies;~~

~~3. Rodents and other vermin;~~

~~4. Unclean utensils and work surfaces,~~

~~5. Unnecessary handling,~~

~~6. Coughs and sneezes,~~

~~7. Flooding;~~

~~8. Drainage; and~~

~~9. Overhead leakage.~~

~~(3) Except when being prepared and served, potentially hazardous food shall be:~~

~~(a) Kept in a safe environment for preservation;~~

~~(b) Forty-five (45) degrees Fahrenheit or below; or~~

~~(c) 140 degrees Fahrenheit or above.~~

~~(4) Except when being thawed for preparation or use, frozen food shall be:~~

~~(a) Kept at a temperature of zero degrees Fahrenheit or below;~~

~~(b) If potentially hazardous:~~

~~1. Thawed at refrigerator temperatures;~~

~~2. Thawed under cool, potable running water;~~

~~3. Quick thawed as part of the cooking process; or~~

~~4. Thawed by another method satisfactory to the health authority.~~

~~(5) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:~~

~~(a) Have an indicating thermometer; or~~

~~(b) Other appropriate temperature measuring device.~~

~~(6) Convenient and suitable sanitized utensils shall be:~~

~~(a) Provided, and~~

~~(b) Used to minimize handling of food during preparation.~~

~~(7) Poultry, pork and their products that have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked.~~

~~(8) Fruits and vegetables shall be washed before cooking or serving.~~

~~(9) Meat salads, poultry salads, and cream filled pastries shall be:~~

~~(a) Prepared with utensils that are clean; and~~

~~(b) Unless served immediately, refrigerated pending service.~~

~~(10) Food shall be stored in:~~

~~(a) Clean racks;~~

~~(b) Shelves;~~

~~(c) Other clean surfaces; or~~

~~(d) If maintained in a sanitary condition, food in nonabsorbent containers may be stored on the floor.~~

~~(11) An individual portion of food served to a child shall not be served again.~~

~~(12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.~~

~~(13) The following shall be inaccessible to a child in care:~~

~~(a) Toxic cleaning supplies, poisons, and insecticides;~~

~~(b) Knives and sharp objects;~~

~~(c) Matches, cigarettes, lighters and flammable liquids;~~

~~(d) Plastic bags;~~

~~(e) Litter and rubbish; and~~

~~(f) Guns and ammunition, which shall be stored in a locked area.~~

~~(14) Health and disease controls shall be in place as follows:~~

~~(a) If a person is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform those duties until the infectious condition can no longer be reasonably expected to be transmitted. Disagreement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.~~

~~(b) An employee shall:~~

~~1. Maintain personal cleanliness;~~

~~2. Conform to hygienic practices while on duty;~~

~~3. Wash hands in running water with liquid soap:~~

~~a. Thoroughly before starting work,~~

~~b. As often as may be necessary to remove soil and contamination; and~~

~~4. Not resume work after toileting without first washing his hands.~~

~~(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.~~

~~(d) Food contact surfaces of equipment and utensils used in a facility shall be:~~

~~1. Smooth;~~

~~2. Free of:~~

~~a. Breaks;~~

~~b. Open seams;~~

~~c. Cracks, or~~

~~d. Chips,~~

~~3. Accessible for cleaning; and~~

~~4. Nontoxic.~~

~~(e) The following shall be clean and sanitary.~~

~~1. Eating and drinking utensils;~~

~~2. Kitchenware,~~

~~3. Food contact surfaces of equipment;~~

~~4. Food storage utensils;~~

~~5. Cooking surfaces of equipment; and~~

~~6. Nonfood contact surfaces of equipment.~~

~~(f) A single service article shall be:~~

~~1. Stored,~~

~~2. Handled and dispensed in a sanitary manner; and~~

~~3. Used only once.~~

~~(g) An effective control measure shall be utilized to minimize the presence on the premises of:~~

~~1. Rodents;~~

~~2. Flies;~~

~~3. Roaches; and~~

~~4. Other vermin.~~

~~(h) An opening to the outer air shall be effectively protected against the entrance of insects by:~~

~~1. Self closing doors;~~

~~2. Closed windows;~~

~~3. Screening;~~

~~4. Controlled air current; or~~

~~5. Other effective means.~~

~~(i) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.~~

~~(j) A kitchen shall be adequately ventilated to the outside air.~~

~~(k) The water supply shall be:~~
~~1. Properly located;~~
~~2. Protected from contamination;~~
~~3. Adequate in volume, and~~
~~4. Obtained from a source approved by the local health department.~~
~~(l) Groundwater supplies for a facility caring for:~~
~~1. More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection; or~~
~~2. Twenty-five (25) children or less shall secure approval from the:~~
~~a. Cabinet for Environmental and Public Protection; or~~
~~b. Local health department.~~
~~(m) Sewage shall be properly disposed of by a method approved by the:~~
~~1. Cabinet for Environmental and Public Protection; or~~
~~2. Cabinet.~~
~~(n) If the adequacy of the plumbing is questioned, consultation shall be sought from the:~~
~~1. Cabinet for Environmental and Public Protection; or~~
~~2. Local sanitarian having jurisdiction over the child care facility.~~
~~(o) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380, On-site disposal.~~
~~(p) A child care facility shall have adequate and conveniently located toilet and handwashing accommodations.~~
~~(q) Each toilet shall:~~
~~1. Be kept in clean condition;~~
~~2. Be kept in good repair;~~
~~3. Be in a lighted room; and~~
~~4. Have ventilation to outside air.~~
~~(r) A supply of toilet paper shall be available.~~
~~(s) Each lavatory shall have hot and cold running water, under pressure, that allows washing of hands under warm water.~~
~~(t) Water temperature at a lavatory used for hand washing shall not exceed 110 degrees Fahrenheit.~~
~~(u) Liquid soap and a sanitized individual cloth or paper towels shall be provided at each lavatory.~~
~~(v) An easily cleanable, covered waste receptacle shall be available in each toilet and handwashing area.~~
~~Section 4. Transportation. (1) Documentation shall be available to indicate conformance to federal and state law pertaining to:~~
~~(a) Vehicles;~~
~~(b) Drivers; and~~
~~(c) Insurance.~~
~~(2) A facility providing or arranging transportation service shall have a:~~
~~(a) Written plan; and~~
~~(b) Statement of transportation policies and procedures.~~
~~(3) Transportation provided by licensed public transportation or a school bus shall:~~
~~(a) Meet Transportation Cabinet safety inspection requirements; and~~
~~(b) Comply with subsections (1) and (2) of this section.~~
~~(4) The following are requirements for a facility-owned vehicle and its usage:~~
~~(a) A twelve (12) or more passenger van or bus shall display a current certification of inspection from the Transportation Cabinet on the designated window.~~
~~(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:~~
~~1. Signal lamps;~~
~~2. Identifying colors; and~~
~~3. Cautionary words.~~
~~(c) A car or van shall be equipped with seat belts for each occupant to be individually secured.~~
~~(d) A vehicle shall not transport children and hazardous materials at the same time.~~
~~(5)(a) The staff-to-child ratios set forth in Section 1(1) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.~~
~~(b) A lone driver shall supervise no more than four (4) children under the age of five (5).~~
~~(6) Each child shall:~~
~~(a) Have a seat,~~
~~(b) Be individually belted or harnessed in the seat; and~~
~~(c) Remain seated while the vehicle is in motion.~~
~~(7) A child under forty (40) inches in height shall be transported in an approved safety seat.~~
~~(8) A vehicle containing a child shall not be left unattended.~~
~~(9) A child shall not be left unattended at the site of aftercare delivery.~~
~~(10) If the parent or a person designated by the parent to accept the child is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.~~
~~(11) If a person other than the person ordinarily designated to receive the child is named as a substitute, the arrangements shall be:~~
~~(a) Made by the parent or person exercising custodial control of the child, and~~
~~(b) Documented at the time the arrangement is made.~~
~~(12) A child shall not be picked up at or delivered to a location that requires crossing the street or highway unless accompanied by an adult.~~
~~(13) A vehicle transporting a child shall have the headlamps on.~~
~~(14) A vehicle shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, a child shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.~~
~~(15) If the driver is not in the driver's seat, the:~~
~~(a) Engine shall be turned off;~~
~~(b) Keys removed, and~~
~~(c) Brake set.~~
~~Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.~~
~~(2) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child used for play. The entire child care facility shall be kept clean and in good repair.~~
~~(3) If a portion of the building is used for a purpose other than day care, necessary provisions shall be made to avoid interference with the day care program.~~
~~(4) The building shall be constructed:~~
~~(a) So that the building is:~~
~~1. Dry;~~
~~2. Adequately heated;~~
~~3. Ventilated; and~~
~~4. Lighted;~~
~~(b) To ensure the following are protected:~~
~~1. Windows;~~
~~2. Doors;~~
~~3. Stoves;~~
~~4. Heaters;~~
~~5. Furnaces;~~
~~6. Pipes; and~~
~~7. Stairs.~~
~~(5) An open window or door shall have a screen.~~
~~(6) A draft-free temperature of sixty-five (65) to seventy-five (75) degrees Fahrenheit shall be maintained in an occupied area during winter conditions. A draft-free temperature of sixty-eight (68) to eighty-two (82) degrees Fahrenheit shall be maintained in an occupied area during summer conditions.~~
~~(7) A facility shall have a minimum of one (1) toilet and one (1) wash basin for each twenty (20) children. In a boy's bathroom, urinals may be substituted for up to one half (1/2) of the number of toilets required. A toilet facility shall be cleaned and sanitized daily.~~
~~(8) The kitchen shall:~~
~~(a) Be clean, and~~
~~(b) Be equipped for the proper:~~
~~1. Preservation;~~
~~2. Storage;~~
~~3. Preparation; and~~
~~4. Serving of food;~~
~~(c) Except in a Type II facility when a meal is not being prepared, not be used for the activity of a child.~~
~~(9) The child care facility shall be equipped with a telephone accessible to a room used by a child.~~
~~(10) A kitchen shall not be required if:~~

~~(a) The only food served is an afternoon snack to school-age children, and~~
~~(b) Adequate refrigeration is maintained.~~
~~(11) An indoor area for infants and toddlers shall be separate from an area used by older children. The infants and toddlers may participate in activities with older children for a short period of time.~~
~~(12) A facility shall have adequate crawling space for infants and toddlers that is:~~
~~(a) Protected from older children; and~~
~~(b) Away from general traffic patterns of the facility.~~
~~(13) A facility shall have a lavatory in or immediately adjacent to a changing area used for infants and toddlers.~~
~~(14) If a child care facility provides an outdoor play area for infants and toddlers, the outdoor area shall be:~~
~~(a) Shaded; and~~
~~(b) Out of the traffic pattern of older children.~~
~~(15) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.~~
~~(16) Outdoor grounds shall be provided as follows:~~
~~(a) An on-site outdoor play area shall be:~~
~~1. Except for an after-school child care program located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;~~
~~2. A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (2) of this section;~~
~~3. Free from:~~
~~a. Litter;~~
~~b. Glass;~~
~~c. Rubbish; and~~
~~d. Flammable materials;~~
~~4. Safe from foreseeable hazard and well drained;~~
~~(b) If a child care facility does not have access to an outdoor play area, an indoor space shall:~~
~~1. Be used as a play area;~~
~~2. Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (2) of this section;~~
~~3. Include gross motor equipment, and~~
~~4. Be well-ventilated and heated.~~
~~(17) Equipment shall be:~~
~~(a) Clean, safe, and in good repair; and~~
~~(b) Meet the physical, developmental needs, and interests of children of different age groups.~~
~~(18) A child care facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day, as specified in Section 1 of this administrative regulation. Toys shall be:~~
~~(a) Used according to the manufacturer's safety specifications;~~
~~(b) Durable, and~~
~~(c) Without sharp points or edges.~~
~~(19) Tables and chairs shall be of suitable size for children.~~
~~(20) Storage space shall be provided:~~
~~(a) In the form of low open shelves accessible to the children; and~~
~~(b) In sufficient quantity for each child's clothing.~~
~~(21) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for a child in attendance for more than three and one-half (3 1/2) hours per day. A crib shall have a firm, comfortable waterproof mattress. Individual sheets and covers shall be provided for a child and laundered a minimum of once per week or as needed. If mats are used, floors shall be free from drafts and dampness. A cot and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by a person.~~
~~(22) A tiered crib shall not be used.~~
~~(23) Supplies shall be stored so that the adult can reach them without leaving the child unattended.~~
~~(24) Chairs shall be provided for staff to use when feeding, holding or playing with a child.~~]

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR. Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007
FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD.A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Dearinger, (502) 564-3556, ext 4227

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a child care center to ensure the health and safety of children in care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 194A.050 (1), which requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for licensed child-care centers.

(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 statute by establishing staff-to-child ratios and describing the requirements to ensure the safe and healthy operation of a licensed child-care center.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will add the definitions from 922 KAR 2:001; revise and clarify the content of daily planned program activities; revise play area requirements, revise infant sleep positions; clarify requirements for sleeping equipment; add requirements for entities providing transportation services; clarify procedures pertaining to diapering practices, general hygiene practices, and animals when present in a child care center; and make technical changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the health and safety of children in the care of a licensed child-care center and raise basic licensure standards of centers to more closely reflect national norms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the au-

thorizing statutes by establishing requirements for planned program activities, indoor and outdoor premises, play areas, sleep positions, sleep equipment, hygiene, transportation services, and the use of animals to ensure the health, safety, and welfare of children in the care of a licensed child-care center.

(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 clarifying the requirements for the issuance of a license and ongoing operation of a child-care center. The amendment also makes technical requirements to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Data from the Office of the Inspector General, Division of Regulated Child Care, indicate as of August 9, 2007, that there are 2156 Type I child care centers and 131 Type II child care centers.

(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: Child care centers will be required to post the daily plan of activities; include in the plan multi-cultural activities; limit the use of electronic viewing and listening devices; have written policy that specifies orientation training procedures to be implemented by each child care staff member; follow the most current policy of the American Academy of Pediatrics when placing a child to sleep; provide a protective surface and fall zone for play equipment used for climbing, swinging, and sliding; provide individual sleeping equipment for each child in attendance in excess of 3 1/2 hours per day, ensure cribs meet federal safety standards; follow hygienic procedures when feeding, diapering, or administering first aide; conduct a daily inspection of vehicles, if providing transportation; ensure drivers meet age, background checks, and license requirements; supervise animals and notify parents if a child is injured by an animal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Monetary costs for these provisions to the child-care center operator and staff are minimal. The extra requirements are for sanitation such as hand washing and diaper changing procedures that will not increase expenses noticeably. The only cost not minimal would be the surface requirements for climbing equipment. Having climbing equipment is not required and is a choice by the center so only those who chose this option will incur more expense. The Department has consulted with diverse groups representing the interests of child care providers in the development of these amendments. These groups include the directors of the statewide Child Care Resource and Referral Agencies and Child Care Service Agents responsible for the Child Care Assistance Program, the STARS Advisory Council, KIDS NOW Implementation Team, and individual providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amendment, child-care center providers will improve the health, safety and quality of services provided to children in their care.

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

(a) Initially: There will be no additional costs to the cabinet as a result of this amendment.

(b) On a continuing basis: There will be no additional costs to the cabinet as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? There are no additional costs to the Cabinet as a result of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funds or fees 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 licensure fees. There are fees established for child care licensure in KRS 199.896.

(9) TIERING. Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 C F.R 1508 and 1509, 45 C.F.R. 98.2, 49 C.F.R. 571.213

2. State compliance standards. KRS 199.894, 199 896(2), (18), (19), 199.898,211.350-211.380, 314 011(5), 620.030, 194A.050(1), 199.896(2)

3. Minimum or uniform standards contained in the federal mandate. 16 C F.R. 1508 and 1509, 45 C.F.R. 98.2, 49 C.F.R. 571.213

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services-Division of Child Care and the Office of the Inspector General-Division of Regulated Child Care 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. 16 C.F.R. 1508 and 1509, 45 C.F.R 98.2, 49 C F.R. 571.213,KRS 199.894, 199 896(2), (18), (19), 199 898, 211.350-211.380, 314.011(5), 620.030, 194A.050(1), 199.896(2).

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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 revenue for the state or local government either for subsequent years.

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS October 9, 2007)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 45.237-45.241, 81.010, 186 040, 199.892, 199 894(1), 199.896, 199.898(1), (2), 199.8982, 199.899,

199.8994[~~(1),(2),(6)~~], 202A.011(12), 214.036, 314.011(5), 605.120(5), 620 020(9), 45 C F.R 98, 205 10(6), 400 66(d), 25 U.S C 459, 1261, 1401, 29 U S C. 723(a)(5), 38 U S.C 1815, [~~46 C.F.R. 98,~~] 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950 to 5084, 8621, 9902(2), 10602(c)

STATUTORY AUTHORITY: KRS 194A 050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs KRS 199.892 enables the Cabinet for Health and Family Services to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U S.C. 601-619 and to provide for effective regulation of child care centers. KRS 199 8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation enables the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis.

(2) "Cabinet" is defined by KRS 199 894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in family members,

(f) Change in self-employment activity;

(g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;

(i) Change in child care provider;

(j) Change in address or residence; or

(k) Change in marital status

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision

(5) "Child care and development fund" or "CCDF" is defined in 45 C F.R 98 2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined in 45 C F R 98 2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has a severe problem or multiple problems that require ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for:

(a) Wages;

(b) Self-employment;

(c) Student teaching, internship, or practicum; or

(d) A combination of the above.

(11) "Family" means an applicant and a child related by blood or law who reside in the same residence and another responsible adult if present

(12) "Family child-care home" is:

(a) Defined by KRS 199 894(5);

(b) Described in KRS 199 8982; and

(c) A home certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care is provided for five (5) or more hours per day

(14)" Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner;

(d) Qualified mental health professional as defined in KRS 600 020(47); or

(e) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician

(15) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian, or

(b) An individual related by blood, marriage, or adoption to the child

(16) "Infant" means a child who is less than one (1) year old,

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(18) "Nonurban" means a county without a first, second, or third class city as specified in KRS 81 010(1) through (3)

(19) "Part day" means child care is provided for less than five (5) hours per day.

(20) "Preschool child" means a child, who has reached the third birthday up to, but not including, the sixth birthday

(21) "Preventive services" is defined by KRS 620 020(9)

(22) "Provider" means the entity providing child care services.

(23) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(15).

(24) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2 180.

(25) "Related" means the child, stepchild, grandchild, great-grandchild, niece, nephew, sibling, or child in legal custody of the child care provider.

(26) "Responsible adult" means a person who is in the child's household who is:

(a) The natural, adoptive, or stepparent; or

(b) The spouse of an individual caring for a child in loco parentis.

(27) "School-age child" means a child who has reached the sixth birthday

(28) "Teenage parent" means a parent who is:

(a) Nineteen (19) years of age or younger; and

(b) Attending high school or pursuing a GED

(29) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

(30) "Urban" is defined as a county listed in KRS 81 010(1) through (3) as having a first, second, or third class city

Section 2. Application Rights and Requirements (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation:

(a) An application shall have been made:

1. On the date a signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance is received at the cabinet or its designee office; or

2. On the date the agency is contacted, if the person:

a Has a physical or mental disability; and

b Needs special accommodation due to the impairment

(b) If the individual or recipient is physically unable to come to the office to apply, the individual or recipient may designate an authorized representative to make application

(c) The applicant may be

1 Assisted by another individual of choice in the application process; and

2 Accompanied by the individual in a contact with the agency

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U S C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income; and

b. Technical eligibility; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(5) A decision shall be made on an application and written notification sent to the applicant within thirty (30) calendar days of receipt of the application form.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a resident of Kentucky; and

(b) Is a U.S. citizen or qualified alien;

(c) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:

(i) Health professional;

(ii) Collateral agency approved by the cabinet, including a school or comprehensive care center, or

(iii) Cabinet employee or designee through a child protective service or preventive service authorization;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(d) Has a current immunization certificate showing that the child is immunized unless:

1. There is an exception pursuant to KRS 214.036, or

2. The child is attending a:

a. Licensed child care center;

b. Certified child care home;

c. Public school,

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or food stamp assistance case in which the child in need of child care assistance is included;

(d) A person living in the same home as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) An alternative program such as Head Start, state preschool, or state kindergarten; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. A child may be eligible to receive CCAP if the child resides with:

(1) An applicant who has employment an average twenty (20) hours per week;

(2) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(3) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional; or

(4) A relative caregiver pursuant to the conditions of KRS 605.120(5), who:

(a) Meets all requirements in this section; and

(b) Meets income eligibility standards in Section 7(1).

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child may be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization:

(a) Shall not be eligible for more than six (6) months without further authorization, and

(b) May have the family copayment required by Section 10 of this administrative regulation waived by the cabinet. If the family copayment is waived, the reason for the waiver shall be documented in the protective or preventive services plan.

Section 6. Kentucky Works Child Care Eligibility Determination. (1) A child may be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370, and

(b) Meets the requirements listed in Section 3.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self sufficiency plan.

Section 7. Income Eligibility. (1) A child shall be eligible for the CCAP if the family's income is less than or equal to:

(a) 150 percent of the federal poverty level at the initial application; or

(b) 165 percent of the federal poverty level at the redetermination.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP if the family's income remains less than or equal to 165 percent of the federal poverty level.

(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(5) Excluded income shall be:

(a) All income received by or on behalf of a child;

(b) K-TAP child only payments, including back payment;

(c) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(d) Educational grant, loan, scholarship, and work study income, including:

1. Payment obtained and used under a condition that precludes the recipient's use for current living cost; and

2. An education grant or loan to an undergraduate made or insured under a program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs;

(e) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(f) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly food stamp allotment;

(g) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(h) In-kind income;

(i) Reimbursement for transportation in performance of an employment duty, if identifiable;

(j) Nonemergency medical transportation payment;

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state, or local governments;

(p) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion.

(t) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care.

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The principal of a verified loan;

(w) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(x) The advance payment or refund of earned income tax credit;

(y) Payment made from the Agent Orange Settlement Fund;

(z) Payment made from the Radiation Exposure Compensation Trust Fund;

(aa) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(bb) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(cc) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(dd) A payment received from the National Tobacco Growers Settlement Trust;

(ee) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201;

(ff) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(gg) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(hh) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act;

(ii) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); or

(jj) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered; and

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by (4.334);

(ii) Biweekly amount by (2.667); or

(iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period, or

(ii) Daily rate by the estimated number of days to be worked in the pay period; and

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Not rounding cents at any step in the calculation;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation;

2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

3. If the self-employment enterprise has been in operation for

less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

4. Profit shall be determined by:

a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:

(i) Twelve (12) if the enterprise has been in operation for at least a year; or

(ii) The number of months the business has operating if the business has been in existence for less than a year; and

b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined:

(a) At least every twelve (12) months; or

(b) At least every six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates include the following categories:

1. Full day;
2. Part day;
3. Urban;
4. Nonurban;
5. Licensed;
6. Certified;
7. Registered;
8. Infant/Toddler;
9. Preschool; and
10. School-age.

(2) To the extent funds are available, a licensed or certified provider may receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. National After School Association; or
5. Other accrediting body approved by the Early Childhood Development Authority or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for non-traditional care for providing child care assistance between:

1. 6 p.m. to 6 a.m.; or
2. Friday, 6 p.m. through Monday, 6 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider may receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child.

(a) With a special need, or

(b) Who is between age thirteen (13) and nineteen (19) and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are a part of a sibling group.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required annual enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 6 of this administrative regulation.

Section 10. Family Copayment. (1) The family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment formula in subsection (3)(a) of this section unless:

(a) The family copayment has been waived under a protection or prevention services authorization; or

(b) If beginning February 1, 2008, the family's total gross countable income is at or below 100 percent of the federal poverty guidelines as updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, that payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3) The cabinet or its designee shall determine a copayment that the family shall pay to the provider for the cost of child care, based on the following formula:

(a) The income ranges for assessing the family copayment for each household size shall increase in standard increments based on the federal poverty guidelines;

(b) The income ranges for each household size shall:

1. Begin with the monthly federal poverty guideline for the family household size plus one (1) dollar; and

2. End with:

a. The monthly federal poverty guideline for the next highest household size, or

b. 165 percent of the federal poverty guidelines for the family household size, whichever comes first; and

(c) The family copayment shall be:

1. Assessed at eight (8) percent of the lowest amount in the income range; and

2. Converted to a daily copayment amount by dividing this figure by twenty-two (22), the average number of work days in a month.

(3)(a) The family copayment formula shall be effective February 1, 2008, or

(b) Unless the income of the child's family is at or below 100 percent of the federal poverty level as prescribed annually by the U.S. Department of Health and Human Services, the copayment for a child who was in the CCAP prior to February 1, 2008, shall remain unchanged until the next action involving the child's eligibility, including:

1. A change in the circumstances of the child or the child's family; or

2. An eligibility redetermination of the child and the child's family.

(4) If a provider notifies the Cabinet or its designee that a family has not complied with a required copayment for two (2) weeks:

(a) The cabinet or its designee shall develop a payment plan with the family;

(b) The CCAP shall not make payment to a subsequent provider until the family demonstrates compliance with the payment plan, unless approval is granted by the cabinet or its designee due to:

1. A disaster;
2. Closure of a provider;
3. Family circumstances, such as relocation, illness, or death; or
4. A risk to the health, welfare, or safety of the child or parent; and

(c) CCAP payments may be suspended during the period in which back payment is owed to the provider.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.896(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a child care certificate, DCC-94, Child Care Ser-

vice Agreement and Certificate.

(3) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster;

(b) Closure of a provider;

(c) Family circumstances, such as relocation, illness, or death, or

(d) A risk to the health, welfare, or safety of the child or the applicant

(4) A family that changes the child care provider more than three (3) times as described in Section 11(3) of this administrative regulation shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in circumstance within ten (10) calendar days of the day the change is known

(6) Failure to report a change in circumstance may result in a decrease or discontinuance of CCAP benefits.

Section 12 Cabinet Requirements (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C F.R 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199 8994(6)(b)

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2 090, Child care center licensure;

(b) 922 KAR 2:100, Certification of family child care homes;

(c) 922 KAR 2:110, Child care facility provider requirements;

(d) 922 KAR 2:120, Child care facility health and safety standards; and

(e) 922 KAR 2.180, Requirements for registered child care providers in the Child Care Assistance Program.

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance

(5) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(6) The recipient shall be given ten (10) calendar days advance notice of the proposed action if a change in circumstances indicates:

(a) A child care benefit shall be:

1 Reduced,

2 Suspended; or

3 Discontinued; or

(b) An individual shall be removed from the child care benefit

(7) The ten (10) calendar days advance notice of the proposed action shall:

(a) Be given on the DCC-105, Notice of Adverse Action;

(b) Explain the reason for the proposed action;

(c) Cite the applicable state administrative regulation; and

(d) Extend the opportunity to confer with the child care worker or to request an appeal pursuant to Section 17 of this administrative regulation.

(8) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective services or preventive services authorization;

(b) A child with a special need;

(c) A teen parent;

(d) A K-TAP recipient attempting through employment to transition off assistance;

(e) An applicant whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment; or

(f) A low income working applicant

Section 13. Provider Requirements (1) A licensed, certified, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee; and

(c) Maintain and submit, upon request of the cabinet or its designee, a monthly sign-in sheet in which the daily arrival and departure times of each child have been recorded.

(2) A licensed or certified child care provider shall complete the DCC-94B, Licensed or Certified Provider Information Form, prior to receiving payment from the CCAP.

(3) A registered child care provider shall complete all requirements of 922 KAR 2:180 prior to receiving payment from the CCAP.

(4) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) per month per child

Section 14 Other Services To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 15 Erroneous Payments (1) The cabinet or its designee shall investigate each:

(a) Instance of apparent erroneous payment; and

(b) Allegation of fraud related to a:

1 CCAP recipient family; or

2 Child care provider

(2) Action shall be promptly taken to correct the payment in an active case.

(3) If an overpayment has occurred, the cabinet or its designee shall:

(a) Determine the amount of the erroneous payment; and

(b) Establish a claim to recover the amount of the overpayment.

(4) If an overpayment has occurred and fraud is suspected, the cabinet shall determine the efficacy of pursuing a judicial remedy prior to attempting to recover the amount of the overpayment through an administrative process.

(5) If a claim has been established, and a judicial remedy has been determined by the cabinet to be inappropriate, the cabinet or its designee shall:

(a) Advise the affected party of the claim; and

(b) Establish a repayment agreement using form DCC-98, Repayment Agreement, for the purpose of recovering a CCAP overpayment from the:

1. Applicant; or

2. Child care Provider

(6) Payments under the CCAP shall be discontinued if a family or provider:

(a) Refuses to sign a DCC-98, or

(b) Defaults on more than three (3) payments under a completed repayment agreement.

(7) If a family or provider reapplies for CCAP benefits after discontinuance from the program for noncompliance with a repayment agreement, as described in subsection (6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the overdue installments.

(8) If a family or provider reapplies for CCAP benefits after discontinuance from the program for refusal to sign a DCC-98 as described in subsection (6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-98 and payment of the overdue installments

(9) If an underpayment has occurred, the cabinet or its designee shall:

(a) Determine the amount owed, and

(b) Issue a refund to the affected party.

(10) If both an overpayment and an underpayment exists for an individual family or provider, the overpayment and underpayment shall be offset one against the other.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the extended family;

2. Illness of:

a. Child; or

b. Applicant;

3. Court orders; or

4. Disaster.

(b) Not be made to a certified provider for more than five (5) absences per child during a month.

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider:

1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or

2. Refuses to sign a DCC-98; or

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Appeals. The cabinet or its designee shall inform a family that:

(1) Appeal of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) calendar days of the date of the negative action.

(2) If a family appeals a:

(a) Reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal, or

(b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Application for Subsidized Child Care Assistance", edition 11/07;

(b) "DCC-90.1, Intent to Apply for Child Care Assistance", edition 11/07;

(c) "DCC-94, Child Care Service Agreement and Certificate", edition 11/07;

(d) "DCC-94B, Licensed or Certified Provider Information Form", edition 11/07;

(e) "DCC-97, Provider Billing Form", edition 11/07;

(f) "DCC-98, Repayment Agreement", edition 11/07;

(g) "DCC-105, Notice of Adverse Action", edition 11/07; and

(h) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", edition 11/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am through 4:30 pm. [~~(1) "Cabinet" is defined in KRS 199.894.~~

~~(2) "Central region" means Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Wayne, and Woodford counties.~~

~~(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.~~

~~(4) "Child care and development fund" or "CCDF" is defined in 45 C.F.R. 98.2.~~

~~(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the technical eligibility requirements of Section 2 of this administrative regulation with the financial resources to find and afford quality child care.~~

~~(6) "Child care certificate" is defined in 45 C.F.R. 98.2.~~

~~(7) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).~~

~~(8) "Child with a special need" means a child who has multiple or severe problems that require ongoing specialized care.~~

~~(9) "East region" means Bath, Bell, Boyd, Bracken, Breathitt, Carter, Clay, Elliott, Fleming, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Whitley, and Wolfe counties.~~

~~(10) "Employment" means public or private, permanent or temporary work for a minimum of twenty (20) hours per week for a wage that is paid, including self-employment.~~

~~(11) "Family" means one (1) or more adults and a child or children related by blood or law, including a stepparent or other person standing in loco parentis who resides in the same residence as the child.~~

~~(12) "Family child care home" is:~~

~~(a) Defined in KRS 199.894(5);~~

~~(b) Described in KRS 199.8982; and~~

~~(c) Certified in accordance with 922 KAR 2:100.~~

~~(13) "Full day" means child care is provided for five (5) or more hours per day.~~

~~(14) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.~~

~~(15) "Infant" means a child who is less than twelve (12) months of age.~~

~~(16) "Nonurban" means a county without a first, second, or third class city in KRS 81.010(1) through (3).~~

~~(17) "Parent" is defined in 45 C.F.R. 98.2.~~

~~(18) "Part day" means child care is provided for less than five (5) hours per day.~~

~~(19) "Preschool" means a child more than thirty-six (36) months of age and not attending kindergarten or elementary education.~~

~~(20) "Preventive services" is defined in KRS 620.020(9).~~

~~(21) "Provider" is defined in 45 C.F.R. 98.2.~~

~~(22) "Qualified alien" means a child who meets the U.S. citizenship requirements of 921 KAR 2:006, Section 1(12).~~

~~(23) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.~~

~~(24) "Related" means that a child care provider and a child under the provider's care have one (1) of the following familial or legal relationships:~~

~~(a) Parent and biological or adopted child;~~

~~(b) Step parent and step child;~~

~~(c) Grandparent and grandchild;~~

~~(d) Great grandparent and great grandchild;~~

~~(e) Sibling;~~

~~(f) 1. Aunt or uncle; and~~

~~2. Niece or nephew; or~~

~~(g) Child custodian and child.~~

~~(25) "School-age child" means a child attending kindergarten, elementary, or secondary education.~~

~~(26) "Self-employment" means earning one's livelihood directly from one's own trade or business for a minimum of twenty (20) hours per week and excludes employment in an individual's residence in which:~~

~~(a) The individual does not leave the residence; and~~

~~(b) Customers do not enter the residence.~~

~~(27) "Teenage parent" means a parent who is:~~

~~(a) Nineteen (19) years of age or younger, and~~

~~(b) Attending high school or pursuing a GED.~~

~~(28) "Toddler" means a child twelve (12) months of age and up to an including thirty-six (36) months of age.~~

~~(29) "Urban" is defined as a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.~~

~~(30) "West region" means Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Grayson, Graves, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Simpson, Todd, Trigg, Union, Warren, Washington, and Webster counties.~~

~~Section 2. Technical Eligibility. (1) A child shall be eligible for a service, if the child:~~

~~(a) Is:~~

~~1. A resident of Kentucky and;~~

~~2. A U.S. citizen or qualified alien;~~

~~(b) Is under age:~~

~~1. Thirteen (13); or~~

~~2. Nineteen (19) and is:~~

~~a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:~~

~~(i) Physician;~~

~~(ii) Licensed or certified psychologist;~~

~~(iii) Qualified mental health professional as defined in KRS 202A.011(12);~~

~~(iv) Collateral agency approved by the cabinet, including a school or comprehensive care center; or~~

~~(v) Cabinet employee or designee through a child protective services or preventive services authorization;~~

~~b. Under court supervision; or~~

~~c. Identified as a priority by federal statute, regulation, or funding source, and~~

~~(c)1. Resides with a parent who is a teenage parent,~~

~~2. Resides with a parent who:~~

~~a. Receives child protective services, or needs to receive child protective services based upon an assessment conducted by the cabinet's protection and permanency staff pursuant to 922 KAR 1:330, except:~~

~~(i) A child who participates in the CCAP as a result of a child protective services authorization shall be eligible without regard to the family's income; and~~

~~(ii) The child care copay required by Section 3(1)(b) of this administrative regulation may be waived by the cabinet or its designee due to the family's protective services needs or related circumstances; or~~

~~b. Receives child preventive services, or needs to receive child preventive services based upon an assessment conducted by the cabinet's protection and permanency staff pursuant to 922 KAR 1:330, except:~~

~~(i) A child who participates in the CCAP as a result of a preventive services authorization shall be eligible without regard to the family's income;~~

~~(ii) The child care copay shall be assessed in accordance with Section 3(1)(b) of this administrative regulation, unless waived by the cabinet or its designee due to the family's preventive services needs or related circumstances; and~~

~~(iii) A child shall not be eligible for more than one (1) year per authorization;~~

~~3. Resides with a parent whose family's income does not exceed 150 percent of the federal poverty level when the initial application, is made or 165 percent of the federal poverty level when the redetermination is made, and:~~

~~a. Is participating in the Kentucky Works Program described in 921 KAR 2:370;~~

~~b. Has had K-TAP benefits discontinued due to employment;~~

~~c. Is employed for a minimum of twenty (20) hours per week; or~~

~~d. Is enrolled in an educational or training program consistent with an employment goal, and:~~

~~(i) Is employed for a minimum of twenty (20) hours per week; or~~

~~(ii) Meets the requirements of subsection (3) of this section; or~~

~~4. Is placed with a relative caretaker pursuant to the conditions of KRS 605.120(5) whose family's income does not exceed:~~

~~a. 150 percent of the federal poverty level when the initial application is made; and~~

~~b. 165 percent of the federal poverty level when the redetermination.~~

~~(2) A child who resides in a two (2) parent household shall be eligible for participation in the CCAP if the family meets the requirements of subsection (1)(a), (b), and (c)3 of this section and:~~

~~(a) Both parents meet the requirements of subsections (1)(c)2 or (3) of this section; or~~

~~(b) One (1) parent meets one (1) or more of the requirements of subsections (1)(c)1 and 3, and (3) of this section and the other parent:~~

~~1. Is physically or mentally unable to provide adequate care or supervision as demonstrated by written proof from a qualified professional attesting to the parent's inability; or~~

~~2. Meets the requirements of subsection (1)(c)2a or b of this section.~~

~~(3) A child who resides with a parent shall be eligible if the parent participates:~~

~~(a) As an unpaid student in a minimum of twenty (20) hours per week of:~~

~~1. Student teaching;~~

~~2. Internship; or~~

~~3. Practicum; or~~

~~(b) In a combination of paid employment and unpaid student capacity described in paragraph (a) of this subsection equal to twenty (20) hours per week.~~

~~(4) To the extent that state and federal funds are available, financial eligibility for participation in the CCAP may be increased beyond 150 percent of the federal poverty level for initial application and 165 percent of the federal poverty level for redetermination.~~

~~(5) A family shall not be eligible for a CCAP benefit if care is provided by:~~

~~(a) A parent or stepparent;~~

~~(b) A legal guardian;~~

~~(c) a member of the K-TAP or food stamp assistance case in which the child in need of services is included;~~

~~(d) A person living in the same home as the child in need of care;~~

~~(e) A provider not:~~

~~1. Licensed according to 922 KAR 2:090, Child care center licensure;~~

~~2. Certified according to 922 KAR 2:100, Certification of family child care homes, or~~

~~3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;~~

~~(f) An alternative program such as Head Start, state preschool or state kindergarten; or~~

~~(g) Another child care provider if the family operates a child care business in the home.~~

~~(6) If the family's income remains less than 165% of the federal poverty level, the family who has transitioned from K-TAP may continue participation in the program.~~

~~(7) Prior to the determination of technical eligibility, a parent of the child shall sign the DCC-90A or DCC-90B, "Application for Subsidized Child Care Assistance".~~

~~(8) If the restrictions specified in subsection (5) of this section do not apply to the related provider, the related provider may be eligible for payment from the Child Care Assistance Program.~~

~~Section 3. Parental Rights and Responsibilities. (1) The family of a child served by the CCAP shall:~~

~~(a) Have rights pursuant to KRS 199.898(1) and (2), and~~

~~(b) Be responsible for a copay in accordance with the family fee scale in Section 4(5) of this administrative regulation, if the child care copay has not been waived under a child protective services authorization or preventive services authorization.~~

~~(2) If a court orders a parent of a CCAP eligible child to pay a portion of the child's day care expenses, that payment shall be in lieu of the parental copayment required by Section 4(5) of this~~

~~administrative regulation.~~

~~(3) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, a parent of a child who receives or has been approved to receive CCAP benefits shall be offered a:~~

~~(a) Child care service subject to the availability of state and federal funds, and~~

~~(b) Choice:~~

~~1. Pursuant to the option offered in 45 C.F.R. 98.30(a)(1); or~~

~~2. To receive a child care certificate, DCC-94A or DCC-94B, Child Care Service Agreement and Certificate, that shall be:~~

~~a. Issued to the parent, and~~

~~b. Of value commensurate with the subsidy value of a child care service provided in subparagraph 1 of this paragraph.~~

~~(4) The DCC-94A or DCC-94B shall:~~

~~(a) Be used for a child care service provided by a licensed, certified, or registered provider, or agency; and~~

~~(b) Not be considered a contract or grant to the child care provider, but shall be considered assistance to the parent pursuant to 45 C.F.R. 98.30(c)(6).~~

~~(5) a parent may change his provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:~~

~~(a) A natural disaster;~~

~~(b) Closure of a provider;~~

~~(c) Familial circumstances, such as relocation, illness, or death; or~~

~~(d) A risk to the health, welfare, or safety of the child or parent.~~

~~(6)(a) Unless there is an exception pursuant to KRS 214.036, a parent shall present to the cabinet or its designee a current immunization certificate showing that the child is immunized in order to receive a child care service under the CCAP.~~

~~(b) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) days while the family takes necessary action to comply with the immunization requirement.~~

~~Section 4. State and Provider Requirements. (1) The cabinet or its designee shall provide consumer information regarding:~~

~~(a) The range of provider options pursuant to 45 C.F.R. 98.30;~~

~~(b) Parental rights pursuant to KRS 199.898(2);~~

~~(c) The K-TAP exception in which K-TAP benefits may not be reduced or terminated pursuant to 921 KAR 2:370 for a single custodial parent who refuses to work if the parent demonstrates an inability to obtain child care services for a child under age six (6); and~~

~~(d) Conditions for termination of the DCC-94A or DCC-94B, pursuant to KRS 199.8994(6)(b).~~

~~(2) The cabinet shall assure that a provider of a child care service funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:~~

~~(a) 922 KAR 2:090, Child care center licensure;~~

~~(b) 922 KAR 2:100, Certification of family child care homes;~~

~~(c) 922 KAR 2:110, Child care facility provider requirements;~~

~~(d) 922 KAR 2:120, Child care facility health and safety standards; and~~

~~(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.~~

~~(3) The cabinet has established the maximum child day care payment as follows:~~

~~(a) The following charts represent the local maximum payment rate on a per day basis. The local maximum payment rate charts include the following categories:~~

~~1. Full day;~~

~~2. Part day;~~

~~3. Urban;~~

~~4. Nonurban;~~

~~5. Licensed;~~

~~6. Certified;~~

~~7. Registered;~~

~~8. Infant/Toddler;~~

~~9. Preschool, and~~

~~10. School-age.~~

~~(b) Except in Bullitt, Carter, Gallatin, Grant, Oldham, Pendleton, Scott, and Woodford counties, the following child care maximum payment rates shall be effective the first day of the month following the adoption of this administrative regulation.~~

~~KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES~~

EAST REGION												
	Licensed				Certified				Registered			
	Full Day		Part Day		Full Day		Part Day		Full Day		Part Day	
	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban
Infant/Toddler	19	18	14	13	17	17	14	13	10	10	6	6
Preschool	16	15	11	11	15	16	11	11	10	10	6	6
School-Age	16	15	11	11	15	16	9	9	10	10	6	6

WEST REGION												
	Licensed				Certified				Registered			
	Full Day		Part Day		Full Day		Part Day		Full Day		Part Day	
	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban
Infant/Toddler	19	18	14	13	17	16	13	12	10	10	6	6
Preschool	18	16	15	14	16	15	12	12	10	10	6	6
School-Age	16.75	16	15	14	16	15	13	12	10	10	6	6

CENTRAL REGION												
	Licensed				Certified				Registered			
	Full Day		Part Day		Full Day		Part Day		Full Day		Part Day	
	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban
Infant/Toddler	24	20	18	14	21	18	17	14	13	13	8	8
Preschool	21	17	15	10	19	17	15	10	12	12	7	7
School-Age	20	16	13	9	18	16.75	13	10	11	11	6	6

~~(c) The following child care maximum payment rates shall be effective for Carter county the first day of the month following the adoption of~~

~~this administrative regulation.~~

	~~Licensed~~		~~Certified~~		~~Registered~~	
	~~Full Day~~	~~Part Day~~	~~Full Day~~	~~Part Day~~	~~Full Day~~	~~Part Day~~
~~Infant/Toddler~~	~~19~~	~~14~~	~~17~~	~~14~~	~~10~~	~~6~~
~~Preschool~~	~~15~~	~~11~~	~~15~~	~~11~~	~~10~~	~~6~~
~~School-Age~~	~~15~~	~~11~~	~~15~~	~~9~~	~~10~~	~~6~~

~~(d) The following child care maximum payment rates shall be effective for Bullitt, Gallatin, Grant, Oldham, Pendleton, Scott, and Woodford county the first day of the month following the adoption of this administrative regulation:~~

	~~Licensed~~		~~Certified~~		~~Registered~~	
	~~Full Day~~	~~Part Day~~	~~Full Day~~	~~Part Day~~	~~Full Day~~	~~Part Day~~
~~Infant/Toddler~~	~~23~~	~~18~~	~~20~~	~~17~~	~~13~~	~~8~~
~~Preschool~~	~~20~~	~~15~~	~~18~~	~~15~~	~~12~~	~~7~~
~~School-Age~~	~~19~~	~~13~~	~~17~~	~~13~~	~~11~~	~~6.~~

~~(4) If the same amount is charged to the general public:~~

~~(a) A licensed or certified provider may receive, to the extent funds are available:~~

~~1. Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:~~

~~a. National Association for the Education for Young Children;~~

~~b. National Early Childhood Program Accreditation;~~

~~c. National Association for Family Child Care;~~

~~d. National School-Aged Child Care Alliance; or~~

~~e. Other accrediting body approved by the Early Childhood Development Authority or the cabinet;~~

~~2. One (1) dollar per day beyond the maximum rate for nontraditional hour care for each child receiving services between:~~

~~a. 6 p.m. to 6 a.m.; or~~

~~b. Friday, 6 p.m. through Monday, 6 a.m.; and~~

~~(b) A licensed, certified, or registered provider may receive, to the extent funds are available, a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:~~

~~1. With a special need; or~~

~~2. Who is between age thirteen (13) and nineteen (19) and is:~~

~~a. Physically and mentally incapable of caring for himself; or~~

~~b. Under court supervision.~~

~~(5)(a) The cabinet or its designee shall determine a copay that the family shall pay to the provider for the cost of child day care, based on the following sliding scale:~~

~~Family Fee Scale~~
~~(Family Co-Pay Per Day)~~

~~Income Range Monthly~~		~~Family Size 2 Family Co-Pay With 1 Child~~	~~Family Size 3 Family Co-Pay~~		~~Family Size 4 Family Co-Pay~~		~~Family Size 5 or More Family Co-Pay~~	
			~~With 1 Child~~	~~With 2 or more~~	~~With 1 Child~~	~~With 2 or more~~	~~With 1 Child~~	~~With 2 or more~~
~~0~~	~~899~~	~~$0.00~~	~~$0.00~~	~~$0.00~~	~~$0.00~~	~~$0.00~~	~~$0.00~~	~~$0.00~~
~~900~~	~~999~~	~~$2.50~~	~~$2.50~~	~~$3.00~~	~~$2.50~~	~~$2.75~~	~~$2.25~~	~~$2.75~~
~~1,000~~	~~1,099~~	~~$3.25~~	~~$3.25~~	~~$3.75~~	~~$2.75~~	~~$3.25~~	~~$2.50~~	~~$3.00~~
~~1,100~~	~~1,199~~	~~$4.00~~	~~$4.00~~	~~$4.50~~	~~$3.25~~	~~$3.75~~	~~$2.75~~	~~$3.25~~
~~1,200~~	~~1,299~~	~~$4.50~~	~~$4.50~~	~~$5.00~~	~~$4.00~~	~~$4.50~~	~~$3.00~~	~~$3.50~~
~~1,300~~	~~1,399~~	~~$5.00~~	~~$5.00~~	~~$5.50~~	~~$5.00~~	~~$5.50~~	~~$3.50~~	~~$4.25~~
~~1,400~~	~~1,499~~	~~$6.50~~	~~$5.50~~	~~$6.25~~	~~$5.50~~	~~$6.25~~	~~$4.25~~	~~$4.75~~
~~1,500~~	~~1,599~~	~~$7.50~~	~~$6.00~~	~~$6.75~~	~~$6.00~~	~~$6.75~~	~~$5.00~~	~~$5.75~~
~~1,600~~	~~1,699~~	~~$8.50~~	~~$6.50~~	~~$7.50~~	~~$6.50~~	~~$7.50~~	~~$6.00~~	~~$6.75~~
~~1,700~~	~~1,799~~	~~$9.50~~	~~$7.00~~	~~$8.00~~	~~$7.00~~	~~$8.00~~	~~$6.75~~	~~$7.50~~
~~1,800~~	~~1,899~~	~~$10.00~~	~~$8.50~~	~~$9.50~~	~~$7.50~~	~~$8.50~~	~~$7.50~~	~~$8.50~~
~~1,900~~	~~1,999~~	~~$10.50~~	~~$9.50~~	~~$10.50~~	~~$8.00~~	~~$9.00~~	~~$8.00~~	~~$9.00~~
~~2,000~~	~~2,099~~	~~$11.00~~	~~$10.50~~	~~$11.50~~	~~$8.50~~	~~$9.50~~	~~$8.50~~	~~$9.50~~
~~2,100~~	~~2,199~~	~~$12.00~~	~~$10.50~~	~~$11.50~~	~~$9.00~~	~~$10.00~~	~~$9.00~~	~~$10.00~~
~~2,200~~	~~2,299~~	~~$12.00~~	~~$11.50~~	~~$12.50~~	~~$10.50~~	~~$11.50~~	~~$9.50~~	~~$10.50~~
~~2,300~~	~~2,399~~		~~$12.50~~	~~$13.50~~	~~$11.25~~	~~$12.25~~	~~$9.75~~	~~$10.75~~
~~2,400~~	~~2,499~~		~~$12.50~~	~~$13.50~~	~~$12.25~~	~~$13.25~~	~~$10.25~~	~~$11.25~~
~~2,500~~	~~2,599~~		~~$13.50~~	~~$14.50~~	~~$12.25~~	~~$13.25~~	~~$10.75~~	~~$11.75~~
~~2,600~~	~~2,699~~		~~$13.50~~	~~$14.50~~	~~$13.25~~	~~$14.50~~	~~$12.25~~	~~$13.25~~
~~2,700~~	~~2,799~~				~~$13.25~~	~~$14.50~~	~~$13.25~~	~~$14.25~~
~~2,800~~	~~2,899~~				~~$14.25~~	~~$15.50~~	~~$14.25~~	~~$15.75~~
~~2,900~~	~~2,999~~				~~$14.25~~	~~$15.50~~	~~$16.25~~	~~$17.25~~
~~3,000~~	~~3,099~~				~~$15.25~~	~~$16.50~~	~~$18.25~~	~~$19.25~~
~~3,100~~	~~3,199~~				~~$15.25~~	~~$16.50~~	~~$20.25~~	~~$21.25~~
~~3,200~~	~~3,299~~						~~$20.25~~	~~$21.25~~
~~3,300~~	~~3,399~~						~~$22.25~~	~~$23.25~~
~~3,400~~	~~3,499~~						~~$22.25~~	~~$23.25~~
~~3,500~~	~~3,599~~						~~$24.25~~	~~$25.25~~
~~3,600~~	~~3,699~~						~~$25.25~~	~~$25.25~~

~~(b) The family fee scale shall be effective the first day of the month following the adoption of this administrative regulation.~~

~~(6) The cabinet or its designee shall determine the maximum daily reimbursement rate and parent copay, not to exceed rates specified in subsections (3) through (5) of this section.~~

~~(7) the parent of a child served by the CCAP, per theDCC-94A or DCC-94B, shall advise the cabinet or its designee of a change in family size, address, or income within ten (10) days.~~

~~(8) Unless a family's child care copay has been waived, the cabinet or its designee shall include the income of each adult family member in the household when calculating a family's gross monthly income with the following exceptions:~~

~~(a) A child's:~~

~~1. Wages; or~~

~~2. Other income;~~

~~(b) Food stamps;~~

~~(c) A one (1) time lump payment;~~

~~(d) Supplemental Security Income or Social Security received in the child's name;~~

~~(e) Daily per diem received as a foster parent;~~

~~(f) A court award;~~

~~(g) A monetary gift;~~

~~(h) Military education benefits;~~

~~(i) K-TAP benefits received on behalf of the child only; and~~

~~(j) An employer only contribution listed on a pay check stub.~~

~~(9) Continued eligibility under the CCAP shall be redetermined:~~

~~(a) Every twelve (12) months; or~~

~~(b) Upon receipt of a reported change.~~

~~(10) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:~~

~~(a) Child protective services or preventive services authorization;~~

~~(b) A child with a special need;~~

~~(c) A teen parent;~~

~~(d) A K-TAP recipient attempting through employment to transition off assistance;~~

~~(e) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;~~

~~(f) A low income working parent; and~~

~~(g) A parent in education or training.~~

~~(11) If CCAP services are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to each family receiving services.~~

~~(12) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to licensed, certified, or registered providers.~~

~~(13) A licensed or certified provider that serves a child who participates in the CCAP shall:~~

~~(a) Report more than five (5) absences per month to the cabinet or its designee; and~~

~~(b) Maintain and submit, upon request of the cabinet or its designee, a monthly sign-in sheet in which the arrival and departure time of each child has been recorded.~~

~~(14) Payment under the CCAP to a registered provider shall be based on the number of days reported on the DCC-97, Provider Billing Form that child care services are provided.~~

~~(15) Upon the effective date of this administrative regulation, a child care center that receives subsidized child care payments, in accordance with this administrative regulation, for forty (40) or more full-time or part-time children shall:~~

~~(a) Have two (2) years to meet the requirements of a STARS for KIDS NOW center as specified in 922 KAR 2:170; and~~

~~(b) Despite any fluctuation in the number of subsidized children eligible for payments receiving care in the child care center, maintain a STARS for KIDS NOW center rating as specified in 922 KAR 2:170.~~

~~Section 5. Recoupment. (1) The cabinet shall recoup a CCAP overpayment in each of the following cases:~~

~~(a) Fraud pursuant to 45 C.F.R. 98.60(i)~~

~~(b) Overpayment on behalf of a parent to a child care provider due to provider error.~~

~~(2) An overpayment shall be recovered through a reduction in the amount payable to the provider.~~

~~(3) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.~~

~~(4) If a family's child care assistance benefit is reduced or terminated, the cabinet or its designee shall provide the family with a minimum of ten (10) days notice of the change in benefits.~~

~~(5) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241, including assistance paid pending the outcome of a hearing, from the claimant payee.~~

~~Section 6. Criteria for Suspension or Termination of Services Under the CCAP. (1) If a family does not comply with a required copay:~~

~~(a) The cabinet or its designee shall develop a payment plan with the family;~~

~~(b) The family shall not transfer to another provider until the family demonstrates compliance with the payment plan, unless approval is granted by the cabinet or its designee due to:~~

~~(a) A natural disaster;~~

~~(b) Closure of a provider;~~

~~(c) Familial circumstances, such as relocation, illness, or death; or~~

~~(d) A risk to the health, welfare, or safety of the child or parent; and~~

~~(c) CCAP benefits may be suspended during the period in which back payment is owed to the provider.~~

~~(2) The cabinet or its designee shall investigate each allegation of fraud or overpayment and establish a repayment agreement with a family for the purpose of recovering a CCAP overpayment.~~

~~(3) Benefits under the CCAP shall be:~~

~~(a) Suspended if a family defaults on up to two (2) payments under a repayment agreement, suspension to end upon compliance with the repayment agreement; or~~

~~(b) Terminated if a family:~~

~~1. Resides out of state;~~

~~2. No longer meets the age, income, or parental status requirements established in Section 2(1), (2) or (3) of this administrative regulation;~~

~~3. Fails to comply with the redetermination requirement established in Section 4(9) of this administrative regulation;~~

~~4. Fails to provide verification of income if a copay has not been waived;~~

~~5. Defaults on three (3) payments under a repayment agreement with the cabinet; or~~

~~6. Refuses to sign DCC-98 a, Repayment Agreement.~~

~~(4) If a family reapplies for CCAP benefits after termination from the program for noncompliance with a repayment agreement, as described in subsection (3)(b)5 of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the three (3) overdue installments.~~

~~(5) If a family reapplies for CCAP benefits after termination from the program for refusal to sign a DCC-98, as described in subsection (3)(b)6 of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-98, and payment of two (2) installments.~~

~~Section 7. Criteria for Nonpayment under the CCAP. (1) Payment under the CCAP shall:~~

~~(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to:~~

~~1. Request payment from the cabinet or its designee prior to submitting the DCC-97; and~~

~~2. Provide explanation for a child having more than five (5) absences;~~

~~(b) Not be made to a certified provider for more than five (5) absences per child during a month;~~

~~(c) Be denied in accordance with KRS 199.8994(6);~~

~~(d) Cease permanently if a provider:~~

~~1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or~~

~~2. Refuses to sign a DCC-98.~~

~~(e) Not be made after the date in which a family begins using a different provider;~~

~~(f) Not be made if a family no longer meets the technical eligibility requirements under the CCAP; or~~

~~(g) Not be made if the child care provider fails to comply with~~

~~Section 4(15) of this administrative regulation.~~

~~(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 4(10) of this administrative regulation.~~

~~Section 8. Appeals. The cabinet or its designee shall inform a family that:~~

~~(1) Appeal of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) days of the date of the negative action; and~~

~~(2) If a family appeals:~~

~~(a) A reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal; or~~

~~(b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DCC-90A, Application for Subsidized Child Care Assistance", edition 09/06;~~

~~(b) "DCC-90B, Application for Subsidized Child Care Assistance", edition 09/06;~~

~~(c) "DCC-94A, Child Care Service Agreement and Certificate", edition 09/06;~~

~~(d) "DCC-9BA, Child Care Service Agreement and Certificate", edition 09/06,~~

~~(e) "DCC-97, Provider Billing Form", edition 09/06, and~~

~~(f) "DCC-98, Repayment Agreement", edition 09-06.~~

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: September 13, 2007

FILED WITH LRC: September 14, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007, at 9.00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 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 November 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: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of the Child Care Assistance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for proper administration of the Cabinet and its programs. KRS 199.892 enables the Cabinet to qualify to receive federal funds under provisions of the Federal Social Security Act and provide effective regulation of child care centers. KRS 199.8994 requires the Cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation conforms to the authorized statutes by allowing the Cabinet to qualify for federal funds and establishes procedures for the implementation of the Child Care Assistance Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of all child day care funds in a manner which is consistent with federal requirements and the best interest of the clients to be served.

(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 proposes the following: restructure family copayments for child care services; clearly outline the application process for applicants of child care services; expand the list of income excluded from the determination of eligibility and copayment assessment; limit CCAP payments to registered child care providers to no more than six children per day to assure health and safety of children in care; provide for advance notice of negative action to recipients; incorporate income calculation processes used to determine countable income; remove the requirement that child care centers receiving subsidized child care payments for forty or more children meet STARS for KIDS NOW center requirements; add the provision that child care enrollment fees may be paid on behalf of families receiving KTAP; provide for the payment of child care services to working families ineligible for CCAP due excess income; limit the payment for absent days to licensed child care centers to five days per month per child unless the absence is due to verified illness, death in the family, court order (child custody issues), disaster; revise materials incorporated by reference; correct formatting and citation errors to comply with KRS Chapter 13A; and make technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to this administrative regulation in order to clarify the application process and definitions, provider and cabinet requirements. This amendment also amends parental copayment requirements, complies with pending technological changes, and implements changes for the proper implementation of the Child Care Assistance Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring Kentucky's continued compliance with federal and state statutory requirements and provides for the proper administration of the child care funds through the establishment of procedures for child care assistance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes through its clarification of the application process, eligibility criteria, providers and cabinet requirements; and restructure of the copayment requirements of parents. The amendment also implements changes to technological systems of the Cabinet and changes for the proper implementation of the Child Care Assistance Program.

(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 a total of 41,000 children who receive child care services. It will also impact child care providers who serve children receiving CCAP benefits. There are currently 2285 licensed child care centers, 820 certified child care centers, and 4950 registered child care providers in

Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parental copayments will be restructured, and relief will be given to families whose household incomes are below 100% of the federal poverty guidelines or who are receiving protective or preventive services. In addition, income exclusions have been added, and the administrative regulation allows for other child care services to be supported, to the extent funding is available

(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 increased cost to regulated entities because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify processes, decrease copayments for those eligible, add income exclusion for program eligibility, and allow for the support of other child care services to the extent funding is available. The amendment also ensures Kentucky's continued eligibility for CCDF (federal block grant).

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

(a) Initially: $10.1 million for State Fiscal Year 2008.

(b) On a continuing basis: $12.9 million.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this amendment will be CCDF (federal block grant).

(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 amendment. The fiscal impact of this administrative regulation will be absorbed by existing appropriations to the cabinet for CCDF.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? The Child Care Assistance Program will be implemented statewide; however, tiering is applied to distinguish urban from nonurban counties. Child care providers in urban counties receive a higher rate of child care assistance, due to the fact that those providers experience higher overhead costs. Those rate differentiations are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 1464.201, 25 U.S.C. 459, 1261, 1401, 29 U S C. 723, 38 U.S.C. 1815, 42 U.S.C 601-619, 1451, 1771, 1775, 2000d, 3001, 5001, 5011, 10601, 45 C.F.R. 98, 45 C.F.R. 400.66

2. State compliance standards. KRS 194A.050, 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 1464.201, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723, 38 U.S C. 1815, 42 U.S C 601-619, 1451, 1771, 1775, 2000d, 3001, 5001, 5011, 10601, 45 C.F.R. 98, 45 C.F.R. 400 66

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 42 U.S.C 601-619, 45 C.F.R. 98

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? For State Fiscal Year 2008, this administrative regulation is projected to cost $10.1M. This cost will be covered by existing agency funds.

(d) How much will it cost to administer this program for subsequent years? For subsequent years, this administrative regulation is projected to cost $12.9M per year. This cost will be covered by existing agency funds.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:170. STARS for KIDS NOW Program for Type I licensed child-care [~~child care~~] centers.

RELATES TO: KRS Chapter 13B [~~13B.125~~], 199.8941, 199.8943, 199.896(4), 199 8992, 42 U.S.C. 601-619, 45 C F.R. 98

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(1), 199.8943(2)

NECESSITY, FUNCTION, AND CONFORMITY KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199 8943(2) requires the Cabinet for Family and Health Services to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for licensed child care centers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B, and a process for the reevaluation of quality ratings. KRS 199 8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type I licensed childcare centers, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Program.

Section 1. Definitions. "Anniversary date" means the approval date on a STARS for KIDS NOW quality rating certificate.

(2)[~~(1)~~] "Commonwealth Child Care Credential" means a certificate of completion of sixty (60) clock hours of instruction from a state agency-approved organization in accordance with 922 KAR

2:250.

(3)[(2)] "Environment assessment" [~~rating scale~~"] means one (1) of four (4) rating scales designed to assess the process quality in an early childhood or school age care group, and consists of the following items to evaluate:

(a) Physical environment;

(b) Basic care;

(c) Curriculum;

(d) Interaction;

(e) Schedule and program structure; and

(f) Parent and staff education.

(4)[(3)] "Infant" means a child who is less than twelve (12) months of age.

(5)[(4)] "Parental or family participation" means [~~involvement of a parent or custodian in~~] a child care program's provision of [~~attempt to provide~~] information or inclusion of a [~~include the~~] parent or caregiver in the program's activities, such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between a child care program's staff and a parent or caregiver; or

(d) Any other activity designed to engage a parent or caregiver in the program's activities.

(6)[(5)] "Preschool" means a child who is older than twenty-four (24) months and younger than school age.

(7)[(6)] "STARS for KIDS NOW Program" or "STARS" means the voluntary quality-based graduated child care rating system established by KRS 199.8943(1).

(8)[(7)] "School-age" means a child attending kindergarten, elementary, or secondary education.

(9)[(8)] "Substitute" means a person employed by a Type I [~~licensed child care~~] center for a period not to exceed fourteen (14) days in a one (1) year period.

(10)[(9)] "Toddler" means a child between the age of twelve (12) and twenty-four (24) months.

(11)[(10)] "Type I child-care center" means a child care center licensed to regularly provide child care services for: [~~by the cabinet or its designee in accordance with 922 KAR 2:090, 2:110, and 2:120 to:~~]

(a) [~~Care for~~] Four (4) or more children in a nonresidential setting [~~facility other than a residence~~]; or

(b) [~~Provide child care for~~] Thirteen (13) or more children in a designated space separate from the primary residence of a licensee [~~the center's residence~~].

Section 2. Application. (1) A Type I [~~licensed child care~~] center may:

(a) Apply to participate in STARS after six (6) months from the date of initial licensure; and

(b) Achieve a quality rating certificate of Level 1 through Level 4.

(2) If an applicant seeks participation in STARS as a Level 1 quality rating certificate:

(a) The applicant shall complete a

1. "DCC-400, Level 1 Rating Certificate Application"; and

2. "DCC-401, STARS for KIDS NOW-Level 1 Standards Check List"; and

(b) The cabinet or its designee shall verify on the DCC-401 the center's documented compliance with the Level 1 requirements described in Section 3 of this administrative regulation.

(3) If an applicant seeks a Level 2, 3, or 4 quality rating certificate, the:

(a) Applicant shall complete a [~~"DCC-400~~], DCC-401, and DCC-405, STARS for KIDS NOW Rating Visit Request Form[~~"~~]; and

(b) Cabinet or its designee:

1. Shall contact the applicant within fifteen (15) working days to schedule a STARS rating visit, upon receipt of a completed DCC-401 and DCC-405;

2. And the applicant shall agree to a two (2) week time period in which the STARS rating visit will occur; and

3. Shall issue to an approved applicant, within sixty (60) calendar days from the date of the STARS rating visit, a quality rating certificate that shall:

a. Be valid for a period specified in Section 11[8](3) of this administrative regulation; and

b. Specify the rating level approved for the center.

(4) For the purpose of redetermining a center's quality rating certificate, a participant in the STARS program may request, at least six (6) months after issuance of a quality rating certificate, another rating visit.

(5) An environment assessment [~~rating scale~~] shall be completed during each rating visit for one-third (1/3) of the total number of classrooms, including at least one (1) classroom for each of the following age groups for which the center provides care:

(a) Infant;

(b) Toddler;

(c) Preschool; and

(d) School age.

(6) A center applying for or participating in the STARS program shall:

(a) Not have an immediate closure, denial of relicensure, or recertification, suspension, or revocation action against the center's license; and

(b) Pay any civil penalty levied against the center if the:

1. Center has waived the right to appeal a civil penalty; or

2. Civil penalty has been upheld on appeal.

Section 3. Level 1 Quality Rating Certificate Requirements. (1) A Type I center:

(a) Shall not be allowed to participate as a Level 1 child care center for more than a two (2) year period; and

(b) May reapply for participation six (6) months after expiration of the Level 1 quality rating certificate.

(2) A center participating in the STARS Program and holding a Level 1 quality rating certificate shall:

(a) Post prominently in each classroom, and maintain compliance with, the:

1. Minimum staff-to-child ratios and group size established in 922 KAR 2:120, Section 2[1];

2. Planned program of activities; and

3. Daily schedule;

(b) Comply with the staff requirements set forth in 922 KAR 2:110, Section 5[3];

(c) Ensure that the center's director or an individual with decision-making authority such as the owner, board chair, or minister, attends an overview of STARS prior to program participation;

(d) Complete an assessment in which at least one (1) environment assessment [~~rating scale~~] shall be used to observe each age group described in Section 2(5) of this administrative regulation, under the following conditions:

1. Each assessment shall be conducted by the center's director with assistance from the cabinet or its designee, if requested, within the first twelve (12) months of participation in STARS;

2. A Level 1 quality rating certificate shall not require a center's achievement of a specific score on the environment assessment [~~rating scale~~]; and

3. Upon completion of the environment rating scale by the center's director during the second year of certification at a Level 1 quality rating, the director shall develop a written plan, with assistance from the cabinet or its designee, if requested, for improved performance in each area identified by the environment assessment [~~rating scale~~] as needing improvement;

(e) Coordinate at least one (1) annual activity involving parental or family participation;

(f) Implement an annual plan for professional development for each employee, including the licensee;

(g) Ensure that the individual who attended the overview described in subsection (2)(c) of this section provides, to each employee who has direct supervisory authority over a child, training regarding the:

1. Licensure requirements in:

a. 922 KAR 2.090, Child care center licensure;

b. 922 KAR 2:110, Child care facility provider requirements; and

c. 922 KAR 2:120, Child care facility health and safety standards,

2. Requirements for participation in the STARS Program;

3. Environment assessment [~~rating scale~~]; and

4. Early Childhood Development Scholarship Program; and

(h) Comply with the requirements of 922 KAR 2:160, Child Care Assistance Program (CCAP).

Section 4. Level 2 Quality Rating Certificate Requirements. A licensed child care center participating in STARS and holding a Level 2 quality rating certificate shall:

(1) Meet the requirements of Sections 2(3) and 3(2)(a)[~~2 and 3~~], (b), (c), and (f) through (h) of this administrative regulation;

(2) Have in each classroom a roster that specifies the first and last name of:

(a) The room's teacher or employee with supervisory authority over a child; and

(b) Each child enrolled in the center and cared for in that room;

(3) Coordinate at least two (2) annual activities that involve parental or family participation;

(4) Provide documentation of a written plan for parental or family involvement;

(5) Achieve an overall average score of at least three (3) on the environment assessment [~~rating scale~~] portion of the STARS rating visit, calculated based upon the total number of environment assessments [~~rating scales~~] conducted during the quality rating visit;

(6) If the center achieves an overall average score of three (3) on the environment assessment [~~rating scale~~], develop a written plan, with assistance from the cabinet or its designee, if requested, for improved performance on subsequent environment assessments [~~rating scales~~];

(7) Achieve and maintain an overall average score of at least four (4) on the environment assessments [~~rating scales~~] by the fourth year of certification at a Level 2 quality rating;

(8) Review and sign the "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist" during the STARS rating visit;

(9) Comply with the provisions of:

(a) 11 KAR 16 040, Early Childhood Development Scholarship Program recordkeeping requirements; and

(b) 11 KAR 16:060, Early Childhood Development Scholarship Program system of monetary incentives;

(10) Ensure that each employee or substitute who has direct supervisory authority over a child[~~:~~

~~(a)~~] receives fifteen (15) [~~three (3)~~] clock hours annually of early care and education training approved by the cabinet or its designee; [~~annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;~~

~~(b) Has completed the Commonwealth Child Care Credential,~~

~~(c) Has a Child Development Associate's Credential;~~

~~(d) Has a Montessori Certificate; or~~

~~(e) Has an associate or higher level of education in:~~

~~1. Interdisciplinary early childhood education;~~

~~2. Early childhood special education;~~

~~3. Early childhood education;~~

~~4. Early childhood development;~~

~~5. Elementary education for teaching kindergarten through fourth grade, if the employee cares for school-age children; or~~

~~6. A related degree approved by the Early Childhood Development Authority;~~]

(11) Ensure that the center's director, or the person responsible for the on-site operation of the center, [~~as required by 922 KAR 2:110:~~

~~(a)~~] receives eighteen (18) [~~six (6)~~] clock hours annually of early care and education training approved by the cabinet or its designee; and [~~annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;~~

~~(b) Has completed the Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;~~

~~(c) Has a Child Development Associate's Credential;~~

~~(d) Has a Montessori Certificate, or~~

~~(e) Has an associate degree or higher level of education in:~~

~~1. Interdisciplinary early childhood education;~~

~~2. Early childhood special education;~~

~~3. Early childhood education;~~

~~4. Early childhood development,~~

~~5. Elementary education for teaching kindergarten through fourth grade, if the director works primarily with school-age children; or~~

~~6. A related degree approved by the Early Childhood Development Authority; and~~]

(12) Provide documentation demonstrating that standardized personnel evaluations are conducted annually.

Section 5. Level 3 Quality Rating Certificate Requirements. A licensed child care center participating in STARS and holding a Level 3 quality rating certificate shall

(1) Post prominently in each classroom and maintain the following staff-to-child ratios and group size:

Age	Ratio	Group Size
Birth - 1 year	1 staff for 4 children	8
1 to 2 years	1 staff for 5 children	10
2 to 3 years	1 staff for 8 children	16
3 to 4 years	1 staff for 11 children	22
4 to 6 years	1 staff for 12 children	24
6 to 12 years	1 staff for 14 children	28

(2) Meet the requirements of Sections 2(3) and 3(2)(a)2 and 3, (b), (c) and (f) through (h) of this administrative regulation;

(3) Coordinate at least three (3) annual activities involving parental or family participation;

(4) Document a procedure for use of parental or family feedback;

(5) Achieve an overall average score of at least four point five (4.5) on the environment assessment [~~rating scale~~] portion of the STARS rating visit;

(6) Review and sign the "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist" during the STARS rating visit;

(7)(a) Meet the requirements of Section 4(2), (4), (9), (10), [~~(11)(b), (c), (d), or (e),~~] and (12) of this administrative regulation; and

(b) Ensure that at least fifty (50) percent of staff, including substitutes, who have direct supervisory authority over a child have completed one (1) of the following:

1. A [~~Completed the~~] Commonwealth Child Care Credential; [~~or~~]

2. A Child Development Associate's Credential; [~~Obtained a higher level of education as described in Section 4(10)(c), (d), or (e) of this administrative regulation;~~]

3. A Montessori Certificate; or

4. An associate or higher level of education in:

a. Interdisciplinary early childhood education;

b. Early childhood special education;

c. Early childhood education;

d. Early childhood development;

e. Elementary education for teaching kindergarten through fourth grade, if the employee cares for school-age children; or

f. A related degree approved by the Early Childhood Development Authority;

(8) Ensure that at least fifty (50) percent of staff who have direct supervisory authority over a child are certified in infant and child:

(a) Cardiopulmonary resuscitation; and

(b) First aid;

(9) Ensure that the center's director, or the person responsible for the on-site operation of the center,[~~:~~]

(a) Annually receives twenty-four (24) [~~twelve (12)~~] clock hours of early care and education training approved by the cabinet or its designee [~~annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110~~]; and

(b) Has one (1) of the following:

1. A Child Development Associate's Credential;

2. A Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;

3. A Montessori Certificate; or

4. An associate degree or higher level of education in:

a. Interdisciplinary early childhood education;

b. Early childhood special education;

c. Early childhood education;

d. Early childhood development;

e. Elementary education for teaching kindergarten through fourth grade, if the director works primarily with school-age children; or

f. A related degree approved by the Early Childhood Development Authority;

(10) Ensure that one (1) of the following is present in the center at least seventy-five (75) percent of the center's daily hours of operation:

(a) The center's director;

(b) A person responsible for the center's operation;

(c) An employee qualified as a child development associate; or

(d) An employee with a higher level of education, as described in subsection (7)(b)3 or 4 [~~Section 4(10)(d) or (e)~~] of this section [~~administrative regulation~~];

(11) Provide at least six (6) days paid leave per year to each employee who:

(a) Works at least thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center less than one (1) year;

(12) Provide paid leave in an amount prorated according to the standard established in subsection (11) of this section for each employee who:

(a) Works less than thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center less than one (1) year;

(13) Provide at least eleven (11) days paid leave per year to each employee who:

(a) Works at least thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center for at least one (1) year;

(14) Provide paid leave in an amount prorated according to the standard established in subsection (13) of this section for each teaching employee who:

(a) Works less than thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center for at least one (1) year; and

(15) If year-round child care services are not offered, provide paid leave in an amount prorated according to the standards established in subsections (11) through (14) of this section.

Section 6. Level 4 Quality Rating Certificate Requirements. A licensed child-care [~~child-care~~] center participating in STARS and holding a Level 4 quality rating certificate shall:

(1) Post prominently in each classroom and maintain the staff-to-child ratios and group size recommended by the National Association for the Education of Young Children;

(2) Meet the requirements of Sections 2(3), 3(2)(a)[~~2 and 3~~], (b), (c) and (f) through (h), and 5(6) of this administrative regulation;

(3) Coordinate at least four (4) annual activities involving parental or family participation;

(4) Meet the requirements of Section 4(2), (4), (9), (10), [~~(11)(b), (c), (d), or (e),~~] and (12) of this administrative regulation;

(5) Meet the requirements of Section 5(4), (7), (8), and (10) through (15) of this administrative regulation;

(6) Achieve an overall average score of at least six (6) on the environment assessment [~~rating scales~~] portion of the STARS [~~STAR~~] rating visit;

(7) Review and sign the "DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist" during the STARS rating visit;

(8) Be accredited by:

(a) The National Association for the Education of Young Children (NAEYC);

(b) The National Early Childhood Program Accreditation (NECPA);

(c) The National After School Association (NAA);

(d) The Southern Association of Colleges and Schools (SACS); [~~or~~]

(e) The National Accreditation Commission for Early Care and Education Programs;

(f) The Association of Christian Schools International Preschool Accreditation Program;

(g) The Council on Accreditation; or

(h) An organization approved by the Early Childhood Development Authority;

(9) Ensure that at least one (1) employee who has a Child Development Associate's Credential or higher level of education, as described in Section 5(7)(b)3 or 4[~~(10)(d) or (e)~~] of this administrative regulation, is present in each classroom during all hours of operation; and

(10) Ensure that the center's director or employee who is designated responsible for the center's on-site operation as required by 922 KAR 2:110:

(a) Meets the standards recommended by the organization by which the center is accredited;

(b) Annually receives twenty-four (24) [~~twelve (12)~~] clock hours of early care and education training [~~annually beyond the twelve (12) hour requirement specified in 922 KAR 2:110~~]; and

(c) Has completed the Director's Credential or an equivalent credential approved by the Early Childhood Development Authority.[~~;~~

~~(11) Ensure that health insurance is available to each employee of the center;~~

~~(12) Pay at least fifty (50) percent of the cost of a single health insurance plan for each employee who works at least thirty-seven and one-half (37.5) hours per week in the center; and~~

~~(13) Pay the cost of a single health insurance plan in an amount no less than a percentage prorated according to the standard set forth in subsection (12) of this section, for each employee who works less than thirty-seven and one-half (37.5) hours per week in the center.~~]

Section 7. STARS for KIDS NOW Achievement [~~and Quality Incentive~~] Awards. To the extent that funds are available, the cabinet shall pay achievement [~~and quality incentive~~] awards to qualified STARS for KIDS NOW participants.

(1) [~~Achievement award.~~

~~(a)~~] A [~~one (1) time~~] STARS achievement award shall be awarded to a Type I center:

(a) The first time the center [~~that~~] achieves a STARS level [~~rating~~], according to the following chart:

	Level 1	Level 2	Level 3	Level 4
Participant's enrollment is 50 children or less	$200	$500	$1,700	$3,000
Participant's enrollment is 51 to 100 children	$200	$750	$2,200	$4,000
Participant's enrollment is more than 100 children	$200	$1,000	$2,700	$5,000

; and

(b) The first time and each subsequent time a center achieves a higher STARS level. [~~A Type I center that achieves a STARS level greater than a Level 1 shall receive an achievement award~~] for each STARS level up to and including all STARS level ratings achieved at that time.

(2) A Type I child-care center that continues to be a STARS rated Level 3 or 4 provider shall be eligible for an annual achievement award during the month of the anniversary date based upon the following chart

Number of children	Level 3	Level 4
50 or less children	$850	$1,500
51 to 100 children	$1,100	$2,000
More than 100 children	$1,350	$2,500

Section 8. [~~(c) An achievement award shall not be awarded more than one (1) time per STARS level achieved.~~

~~(2)~~] Quality incentive award. To the extent funds are available, the cabinet shall pay quality incentive awards to qualified STARS for KIDS NOW participants.

(1)[~~(a)~~] A Level 1 STARS rated Type I center shall not be eligi-

ble to receive a quality incentive award.

(2)[(b)] Quality incentive awards shall be calculated and paid on the percentage of children served by the Child Care Assistance Program, as described in 922 KAR 2:160, to the qualified center.

(3)[(c)] A quality incentive award shall be calculated and paid based on the center's STARS rating level and the percentage of CCAP subsidized children, compared to the total number of children served during the month the quality rating certificate was issued. The product of this equation shall be the monthly amount of the quality incentive award.

(4)[(d)] The following chart shall be used when calculating the amount of a quality incentive award:

	Amount per month per child under age three (3)			Amount per month per child age three (3) and over		
Participant's enrollment percentage	Level 2	Level 3	Level 4	Level 2	Level 3	Level 4
1 - 10%	$8	$12[$11]	$15[$13]	$7	$11[$10]	$14[$12]
11 - 25%	$9	$13[$12]	$16[$14]	$8	$12[$11]	$15[$13]
26 - 50%	$10	$14[$13]	$17[$15]	$9	$13[$12]	$16[$14]
51 - 75%	$11	$15[$14]	$18[$16]	$10	$14[$13]	$17[$15]
76% or more	$12	$16[$15]	$19[$17]	$11	$15[$14]	$18[$16]

(5)[(e)] A Quality incentive award shall be paid to a qualified center at least annually, and the quality incentive award shall be recalculated annually to the center.

Section 9. Enhancement Awards. To the extent funds are available, the cabinet shall pay enhancement awards to qualified STARS for KIDS NOW participants.

(1) A Level 4 Type I child-care center shall be eligible for an enhancement award when the child-care center:

(a) Completes the DCC-404E, STARS for KIDS NOW-Level 4 Enhanced Standards Checklist, ensuring that health insurance is available to each employee of the center;

(b) Pays at least fifty (50) percent of the cost of a single health insurance plan for each employee who works at least thirty-seven and one-half (37.5) hours per week in the center; and

(c) Pays the cost of a single health insurance plan in an amount no less than a percentage prorated according to the standard set forth in subsection (2)(b) of this section, for each employee who works less than thirty-seven and one-half (37.5) hours per week in the center.

(2) The annual enhancement award shall be:

(a) Only for Type I Level 4 child-care centers;

(b) Paid during the month of the anniversary date; and

(c) Based upon the following chart:

50 or less children	$1,500
51 to 100 children	$2,000
More than 100 children	$2,500

Section 10. Interim Report. (1) Except during a renewal year, a Level 2, 3, or 4 center shall complete and submit to the cabinet or its designee prior to the anniversary date a:

(a) DCC-413, STARS for KIDS NOW Interim Report Standards Documentation; and

(b) DCC-414, STARS for KIDS NOW Interim Report Staff Training Documentation, for each staff person, including the director.

(2) The cabinet or its designee shall notify a participating center of requirements in subsection (1) of this section at least ninety (90) calendar days prior to the anniversary date.

Section 11.[8.] Renewal of a Quality Rating Certificate. (1) The cabinet or its designee shall notify a participating center at least ninety (90) calendar days before expiration of the center's quality rating certificate.

(2) A center shall submit a DCC-401 and DCC-405 to the cabinet or its designee for a quality rating visit at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) A quality rating certificate shall be renewed by a quality rating visit every:

(a) Year for a Level 1 rated center;

(b) Two (2) years for a Level 2 rated center;

(c) Three (3) years for a Level 3 rated center; and

(d) Four (4) years for a Level 4 rated center.

Section 12. [9.] Conditions Requiring Reevaluation. (1) Reevaluation of a center's quality rating certificate and associated level shall be conducted if the:

(a)[(1)] Location of a licensed child care center changes;

(b)[(2)] Participant requests a reevaluation in accordance with Section 2(5) of this administrative regulation; [or]

(c)[(3)] Cabinet or its designee determines a need to reassess the participating center's STARS participation or level rating due to reports or findings concerning a reduction in the center's quality of care and services; or

(d) Center fails to return the DCC-413 or DCC-414.

(2) A decrease in level rating due to a re-evaluation shall reduce the basis of awards specified in sections 7, 8, and 9 of this administrative regulation.

Section 13. [10.] Conditions Requiring Revocation. (1) A participant's quality rating certificate shall be revoked for:

(a) Immediate closure pursuant to KRS 13B.125 and 199.896(4);

(b) Denial of relicensure;

(c) A pending suspension or revocation action taken against the child care center's license;

(d)1. Failure to comply with payment of a civil penalty levied against the center; or

2. Failure to make payment arrangements for a civil penalty within sixty (60) days and comply with that arrangement; if:

a. The center waived the right to appeal the civil penalty; or

b. The civil penalty has been upheld on appeal.[-]

(e) Failure to comply with the requirements of 922 KAR 2:160,

(f) Two (2) or more civil penalties levied against the center in a twelve (12) month period; or

(g) A change in ownership.

(2) [Payment of a quality incentive award shall cease] Upon revocation of a quality rating certificate, payment shall cease for:

(a) A quality incentive award;

(b) An enhancement award; or

(c) An annual achievement award.

Section 14 [11.] Quality Rating Certificate. A quality rating certificate shall be returned to the cabinet if the:

(1) Certificate is revoked,

(2) Certificate is not renewed; or

(3) Center voluntarily withdraws from the STARS Program.

Section 15 [12.] Appeals. (1) If the cabinet or its designee determines that a participant does not meet the rating level standards for which the center is certified, a center shall:

(a) Accept a lower rating level; or

(b) Request an administrative hearing in accordance with 922 KAR 1:320, Section 2(11).

(2) Payment of an [a quality incentive] award in Sections 7, 8, or 9 of this administrative regulation shall be held in abeyance pending resolution of appeal of a reduced rating level.

(3) If denial, suspension, or revocation of a child care center's license is reversed upon appeal, the:

(a) Center may reapply for participation in the STARS Program; or

(b) Cabinet may reinstate the center at the STARS level the center was rated prior to the licensure issue if the:

1. Center submits a request for reinstatement; and

2. Center's STARS quality rating certificate and licensure has not expired.

Section 16 [13.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-400, Level 1 Rating Certificate Application", edition 9/06;

(b) "DCC-401, STARS for KIDS NOW-Level 1 Standards Checklist", edition 1/08[~~9/06~~];

(c) "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist", edition 1/08[~~9/06~~];

(d) "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist", edition 1/08[~~9/06~~];

(e) "DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist", edition 9/06;

(f) "DCC-404E, STARS for KIDS NOW-Level 4 Enhanced Standards Checklist", edition 01/08; and

(g) "DCC-405, STARS for KIDS NOW-Rating Visit Request Form", edition 9/06

(h) "DCC-413, STARS for KIDS NOW Interim Report Standards Documentation", edition 01/08; and

(i) "DCC-414, STARS for KIDS NOW Interim Report Staff Training Documentation", edition 01/08.

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 12, 2007
FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Dearinger, (502) 564-3556, ext 4227

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type I licensed child-care centers, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Program quality rating system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a graduated voluntary rating system for licensed child care centers, agency time frames for review of quality ratings, a process for reevaluation of quality ratings, and establishes monetary awards for participants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 194A.050(1) which requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Health and Family Services to promulgate an administrative regulation that implements voluntary quality-based graduated child care rating system for licensed child-care centers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type I licensed child-care centers, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Program.

(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 statute by describing the requirements to participate in the STARS for KIDS NOW Program for Type I licensed child-care centers.

(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 will conform training and education requirements for Type I licensed childcare center staff to licensure regulations. This amendment describes an additional annual achievement award for Level 3 and 4 participants, an increase to quality incentive awards paid to centers providing care to CCAP subsidized children, and an enhancement award for Level 4 centers that provide employee health insurance. The requirement that health insurance be provided by a center to employees in order to receive a Level 4 rating is removed. Program participants will be required to complete and submit interim reports. Forms contained in material incorporated by reference are revised.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to mirror training and education requirements of Type I licensed child-care center staff to licensure regulations and increase financial incentives to child-care centers to participate and progress in the program to upgrade quality in Type I licensed child-care centers.

(c) How the amendment conforms to the content of the authorizing statutes The amendment conforms to the content of the authorizing statutes by establishing requirements for a voluntary quality-based graduated child care rating system for licensed child-care centers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings.

(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 clarifying the requirements for the issuance of a quality rating certificate and ongoing operation STARS for KIDS NOW program. The amendment clarifies procedures and responsibilities contained within the administrative regulation and makes technical requirements to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Data from the Office of the Inspector General, Division of Regulated Child Care, indicate as of August 9, 2007, that there are 2156 Type I licensed child-care centers and approximately 687 of them are currently participating in the STARS for KIDS NOW Quality Rating Program.

(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: This amendment will require STARS for KIDS NOW Quality Rating Program participants to complete and submit an interim report.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):Monetary costs, if any, for these provisions to a Type I licensed child-care center operator are minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3).As a result of compliance with the

amendment, a Type I licensed child-care center operator will improve the quality of services provided to children in their care and may benefit from STARS for KIDS NOW Quality Rating Program financial awards system.

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

(a)Initially: There are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care.

completed an analysis and anticipates initial implementation will require additional funding of $1,072,500 to pay for increased awards to Type I licensed childcare centers. Funding is available through the existing Tobacco Fund allotment and the Child Care Development Fund federal grant. Funds for the amendment have been budgeted.

(b) On a continuing basis: There are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates ongoing added costs of $797,500 to pay for increased awards to Type I licensed child care centers. Funding is available through the existing Tobacco Fund allotment and the Child Care Development Fund federal grant. Funds for the amendment have been budgeted.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of the funding to be used for the implementation and enforcement of this administrative regulation is the Tobacco Fund allotment and the Child Care Development Fund federal grant.

(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 increase in funds or fees 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? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS Chapter 13B, 199.8941, 199.8943, 199.896(4), 199.8992, KRS 194A.050(1), 199.8941(1), 199.8943(2)

3. Minimum or uniform standards contained in the federal mandate.42 U.S.C. 601-619, 45 C.F.R. 98

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 601-619, 45 C.F.R. 98, KRS Chapter 13B, 199.8941, 199.8943, 199.896(4), 199.8992, KRS 194A.050(1), 199.8941(1), 199.8943(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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 revenue for the state or local government either for subsequent years.

(c) How much will it cost to administer this program for the first year? Initially, there are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates initial implementation will require additional funding of $1,072,500 to pay for increased awards to Type I licensed childcare centers. Funds for the amendments have been budgeted to cover the additional costs.

(d) How much will it cost to administer this program for subsequent years? On a continuing basis, there are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates ongoing added costs of $797,500 to pay for increased awards to Type I licensed child care centers. Funds for the amendment have been budgeted to cover the additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:210. STARS for KIDS NOW Program for Type II licensed and certified family child-care [~~child-care~~] homes.

RELATES TO: KRS Chapter 13B [~~13B.125~~], 199.894, 199.8941, 199.8943, 199.896(4), 199.8982, 199 8992, 199.990, 42 U.S.C. 601-619, 45 C.F.R. 98

STATUTORY AUTHORITY: KRS 194A.050(1), 199 8941(1), 199.8943(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Health and Family Services to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for family child-care [~~child-care~~] homes, agency time frames for review of quality ratings, an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type II licensed child-care [~~child-care~~] centers and certified family child-care [~~child-care~~] homes and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Quality Rating Program.

Section 1. Definitions. (1) "Anniversary date" means the approval date on a STARS for KIDS NOW quality rating certificate [~~"Certified family child-care home" means a home in the program established by KRS 199.8982.~~]

(2) "Assistant" means a person:

(a) Who meets the requirements listed in 922 KAR 2:100, Sections 2(4) and 9(7), (8), (9); and

(b) Who works either paid or unpaid.

(3) "Commonwealth Child Care Credential" means a certificate of completion of sixty (60) clock hours of instruction from a state agency-approved organization in accordance with 922 KAR 2:250.

(4)[(3)] "Environment assessment[rating scale]" means one (1) of four (4) rating scales designed to assess the process quality in an early childhood or school age care group, and consists of the following items to evaluate:

(a) Physical environment;

(b) Basic care;

(c) Curriculum;

(d) Interaction;

(e) Schedule and program structure; and

(f) Parent and staff education.

(5)[(4)] "Family child-care [child care] home" means a certified family child-care home as [is] defined by KRS 199.8982 and [in] KRS 199.894(5).

(6)[(5)] "Parental or family participation" means [involvement of a parent or custodian in] a Type II center or family child-care [child care] home's provision of [attempt to provide] information or inclusion of a [include the] parent or custodian in the Type II center or family child-care home's activities, such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the Type II center or family child-care home and a parent or custodian; or

(d) Other activity designed to engage a parent or custodian in the program's activities.

(7)[(6)] "STARS for KIDS NOW Program" or "STARS" means the voluntary quality-based graduated childcare rating system established by KRS 199.8943(1).

(8) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12) children, including children related to the licensee. [(7) "Type II Center" means a child care center licensed by the cabinet or its designee in accordance with 922 KAR 2:090, 2:110, and 2:120 and that provides care

(a) In a home or dwelling unit that is the full-time residence of the licensee, and

(b) For at least seven (7), but not more than twelve (12) children.]

Section 2. Application. (1) A Type II center or a [certified] family child-care [child care] home may:

(a) Apply to participate in the STARS program after six (6) months from the date of initial licensure or certification; and

(b) Achieve a quality rating certificate of Level 1 through Level 4.

(2) If an applicant seeks participation in STARS as a Level 1 quality rating certificate:

(a) The applicant shall complete a:

1. "DCC-400, Level 1 Rating Certificate Application"; and

2. "DCC-401, STARS for KIDS NOW-Level 1 Standards Check List"; and

(b) The cabinet or its designee shall verify on the DCC-401, the applicant's documented compliance with the Level 1 requirements described in Section 3 of this administrative regulation.

(3) If an applicant seeks a Level 2, 3, or 4 quality rating certificate, the:

(a) Applicant shall complete a DCC-401, and DCC-405, STARS for KIDS NOW Rating Visit Request Form"; and

(b) Cabinet or its designee:

1. Shall contact the applicant within fifteen (15) working days to schedule a STARS rating visit, upon receipt of a completed DCC-401 and DCC-405;

2. And the applicant shall agree to a two (2) week time period for the STARS rating visit to occur; and

3. Shall issue to an approved applicant, within sixty (60) calendar days from the date of the STARS rating visit, a quality rating certificate that shall:

a. Be valid for a period specified in Section 11[8](3) of this administrative regulation; and

b. Specify the rating level approved for the Type II center or family child-care [child care] home.

(4) For the purpose of redetermining the Type II center's or family child-care home's rating, a participant in the STARS Program may request, at least six (6) months after issuance of a quality rating certificate, another rating visit.

(5) A Type II center or family child-care [child care] home applying or participating in the STARS program shall:

(a) Not have an immediate closure, denial of relicensure or recertification, suspension, or revocation action against the Type II center's license or home's certificate; and

(b) Pay any civil penalty levied against the Type II center or family child-care home if the:

1. The right to appeal a civil penalty has been waived; or

2. Civil penalty has been upheld on appeal.

Section 3. Level 1 Quality Rating Certificate Requirements. (1) A Type II center or family child-care [child care] home:

(a) Shall not be allowed to hold a Level 1 quality rating certificate for more than two (2) years; and

(b) May reapply for participation six (6) months after expiration of the Level 1 quality rating certificate.

(2) A Type II center or family child-care [child care] home participating in STARS and holding a Level 1 quality rating certificate shall.

(a) Post prominently in the home, and maintain compliance with the:

1. Capacity requirements established in 922 KAR 2:100, Section 10, if the STARS participant is a [certified] family child-care [child care] home; or

2. Following staff-to-child ratios if the participant is a [licensed] Type II center:

Type II center [child day care home]	
Age of Children	Ratio
Birth to 1 year	1:5
1 to 2 years	1:6
2 to 3 years	1:10
3 and older	1:12

(b) If the participant is a:

1. [Certified] Family child-care [child care] home, comply with the requirements set forth in 922 KAR 2:100; or

2. Licensed Type II center, comply with the requirements established in:

a. 922 KAR 2:090, Child care center licensure;

b. 922 KAR 2.110, Child care facility provider requirements; and

c. 922 KAR 2:120, Child care facility health and safety standards;

(c) Attend an overview of STARS prior to program participation,

(d) Agree to an [assessment in which the] environment assessment [rating scale shall be used] under the following conditions.

1. The environment assessment [rating scale] shall be conducted by the Type II center or family child-care [child care] home with assistance, if requested, from the cabinet or its designee within the first twelve (12) months of participation in the program,

2. The Type II center or family child-care [child care] home shall not be required to achieve a specific score on the environment assessment [rating scale]; and

3. Upon completion of the environment assessment [rating scale] during the second year of certification at a Level 1 quality rating, the Type II center or family child-care [child care] home shall develop a written plan, with assistance from the cabinet or its designee, if requested, for improved performance in each area identified by the environment assessment [rating scale] as needing improvement;

(e) Post in a prominent area, the Type II center or family child-care [child care] home's:

1. Planned program of activities; and

2. Daily schedule;

(f) Coordinate at least one (1) annual activity involving parental

or family participation;

(g) Maintain a written child care agreement with each child's parent or custodian, including the name of each person designated by the parent to pick up the child;

(h) Maintain a written description of services that includes:

1. Current rates for child care;

2. Hours of operation;

3. A plan for daily communication with each child's parent or custodian; and

4. Policy regarding:

a. Late fees;

b. Holidays;

c. Vacation;

d. Illness; and

e. How an arrangement shall be made for an individual, other than one (1) previously designated by the parent, to pick up a child;

(i) Comply with 922 KAR 2.160, Child Care Assistance Program (CCAP); and

(j) In the case of a:

1. [~~Certified~~] Family child-care [~~child-care~~] home, develop and implement a written plan for obtaining annual training required by KRS 199.8982(2); or

2. [~~Licensed~~] Type II center, develop and implement a written annual plan for obtaining training for each employee, including the licensee.

Section 4. Level 2 Quality Rating Certificate Requirements. A Type II center or family child-care [~~child-care~~] home participating in STARS and holding a Level 2 quality rating certificate shall:

(1) Meet the requirements of Sections 2(3) and 3(2)(a) through (c), (e), and (g) through (j) of this administrative regulation;

(2) Coordinate at least two (2) annual activities that involve parental or family participation,

(3) Provide documentation of a written plan for parental or family involvement;

(4) Achieve an average score of at least three (3) on the environment assessment [~~rating scale~~] portion of the STARS rating visit;

(5) If the Type II center or family child-care [~~child-care~~] home achieves an average score of three (3) on the environment rating scale portion of the STARS rating visit, develop a written plan, with assistance from the cabinet or its designee, if requested, for improved performance on subsequent environment assessment [~~rating scale~~];

(6) Achieve an average score of at least four (4) on the environment assessment [~~rating scale~~] portion of the STARS rating visit by the fourth year of certification at a Level 2 quality rating;

(7) Maintain an overall average score of four (4) on the environment assessment [~~rating scale~~] portion of the STARS rating visit for each year beyond the fourth year of certification at a Level 2 quality rating;

(8) Review and sign the "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist" during the STARS rating visit,

(9) Ensure that at least one (1) person on duty is certified in infant and child:

(a) Cardiopulmonary resuscitation; and

(b) First aid;

(10) Meet the training requirement as follows:

(a) A [~~If the STARS participant is a:~~

~~1. Certified~~] family child-care [~~child-care~~] home, complete nine (9) [~~three (3)~~] clock hours of early care and education training approved by the cabinet or its designee annually[~~, beyond the six (6) hour requirement specified in 922 KAR 2:100~~], or

(b) A [~~2.~~] Type II center shall have [~~,~~] the licensee and each staff person [~~shall~~] annually complete fifteen (15) [~~three (3)~~] clock hours of early care and education training approved by the cabinet or its designee, [~~annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;~~

~~(b) Obtain a Commonwealth Child Care Credential;~~

~~(c) Have a Child Development Associate's Credential;~~

~~(d) Complete the Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;~~

~~(e) Have a Montessori Certificate; or~~

~~(f) Have an associate or higher level of education in:~~

~~1. Interdisciplinary early childhood education;~~

~~2. Early childhood special education;~~

~~3. Early childhood education;~~

~~4. Early care and education;~~

~~5. Elementary education for teaching kindergarten through fourth grade, if the center or home cares for school-age children; or~~

~~6. A related degree approved by the Early Childhood Development Authority.~~]

(11) In the case of a Type II center, comply with the provisions of:

(a) 11 KAR 16 040, Early Childhood Development Scholarship Program recordkeeping requirements; and

(b) 11 KAR 16 060, Early Childhood Development Scholarship Program system of monetary incentives; and

(12) Provide proof that a recordkeeping system is maintained, including:

(a) Documentation of child care business expenses; and

(b) Income from the business.

Section 5. Level 3 Quality Rating Certificate Requirements. A Type II center or family child-care [~~child-care~~] home participating in STARS and holding a Level 3 quality rating certificate shall:

(1) In the case of a:

(a) [~~Certified~~] Family child-care [~~child-care~~] home, have an assistant if the home [~~center~~] cares for at least six (6) children and more than three (3) are infants or children under the age of twenty-four (24) months; or

(b) Type II center, meet the following staff-to-child ratios:

Age of Children	Ratio
Birth - 1 year	1.4
1 to 2 years	1:5
2 to 3 years	1.8
3 and older	1:12

(2) Meet the requirements of Sections 2(3) and 3(2)(b), (c), and (e), (g) through (j) of this administrative regulation;

(3) Coordinate at least three (3) annual activities involving parental or family participation;

(4) Achieve an average score of at least 4.5 on the environment assessment [~~rating scale~~] portion of the STARS rating visit;

(5) Achieve a score of at least five (5) on the environment assessment [~~rating scale~~] portion of the STARS rating visit pertaining to the use of television;

(6) Review and sign the "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist" during the STARS rating visit;

(7) Meet the requirements of Section 4(3), (9), (11), and (12) of this administrative regulation;

(8) Provide each parent or custodian with a:

(a) Written daily report for a child under two (2) years of age, and

(b) Handbook containing a description of Type II the center or family child-care home's policies; and

(9) Meet the training requirement as follows:

(a) A certified family child-care [~~child-care~~] home operator shall.

1.[~~a.~~] Complete eighteen (18) clock hours of early care and education training approved by the cabinet or its designee annually; or

2. Complete nine (9) clock hours of early care and education training approved by the cabinet or its designee and have one of the following:

a. A Commonwealth Child Care Credential;

b. A Child Development Associates Credential;

c. A Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;

d. A Montessori Certificate;

e. An associate degree or higher level of education in:

(i) Interdisciplinary early childhood education;

(ii) Early childhood special education;

(iii) Early childhood education;

(iv) Early child care and education;

(vi) Elementary education for teaching kindergarten through

fourth grade, if caring for school-age children; or

(vii) A related degree approved by the Early Childhood Development Authority;

[~~b. Obtain a higher level of education as specified in Section 4(10)(b) through (f) of this administrative regulation, and~~]

3. [~~2.~~] By the fourth year of participation in the STARS Program, have obtained a Child Development Associate's Credential or higher level of education as specified in subsection (9)(a)2(c) through (e) of this section;

4. Ensure that each assistant has:

a. Attended basic orientation training; and

b. Obtained six (6) hours of early care and education training approved by the cabinet or its designee annually. [~~Section 4(10) (d) through (f) of this administrative regulation.~~]

b. Has a higher level of education as specified in subsection (9)(a)2a through e of this section and completes eighteen (18) clock hours of early care and education training approved by the cabinet or its designee annually [~~Section 4(10) (b) through (f) of this administrative regulation~~]; and

3. By the fourth year of participation in STARS, have obtained a Child Development Associate's Credential or higher level of education as specified in subsection (9)(a)2c through e of this section [~~Section 4(10) (d) through (f) of this administrative regulation; and~~

~~(10) Ensure that each assistant has:~~

~~(a) Attended basic orientation training; and~~

~~(b) Obtained three (3) hours of early care and education training approved by the cabinet or its designee annually~~].

Section 6. Level 4 Quality Rating Certificate Requirements. A Type II center or family child-care [~~child care~~] home participating in STARS and holding a Level 4 quality rating certificate shall:

(1) Not exceed nine (9) children if a certified family child-care [~~child care~~] home;

(2) Meet the requirements of Section 3(2)(b) (c), (e), and (g) through (j) of this administrative regulation;

(3) Coordinate at least four (4) annual activities involving parental or family participation;

(4) Meet the requirements of Sections 2(3), 4(3), (9), (11), and (12)[~~, and 5(6)~~] of this administrative regulation;

(5) Meet the requirements of Section 5(1), (6)[~~(5)~~], (8), (9), and (10) of this administrative regulation;

(6) Achieve an average score of at least 5 5 on the environment- assessment [~~rating scale~~] portion of the STARS rating visit;

(7) Review and sign the "DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist";

(8) Be accredited by:

(a) The National Association for Family Child Care; or

(b) An organization approved by the Early Childhood Development Authority;

(9) Show proof of membership in an early childhood professional organization that has national, multi-state, regional, or statewide affiliation; and

(10) Meet the following relevant training requirement:

(a) A Type II center director or family child-care [~~child care~~] home operator shall:

1. Have a higher level of education as specified in Section 5(9)(b)2 [~~4(10) (c)~~] through 5[~~(f)~~] of this administrative regulation; and

2. Complete the Director's Credential or an equivalent credential approved by the Early Childhood Development Authority; and

(b) Each staff person employed by a Type II center shall:

1. Complete twenty-one (21) clock hours of early care and education training approved by the cabinet or its designee annually; or

2. Have a higher level of education as specified in Section 5(9)1 through 5 [~~4(10) (b) through (f)~~] of this administrative regulation.

Section 7. STARS Achievement [~~and Quality Incentive~~] Awards. To the extent that funds are available, the cabinet shall pay achievement [~~and quality incentive~~] awards[~~.~~] to qualified STARS participants

(1) A [~~Achievement award~~

~~(a) A one (1) time~~] STARS achievement award shall be awarded to a Type II center or family child-care [~~child care~~] home:

(a) The first time the Type II center or family child-care home [~~that~~] achieves a STARS level [~~rating~~], according to the following chart:

Level 1	Level 2	Level 3	Level 4
$100	$250	$500	$1,000

; and

(b) The first time and each subsequent time the Type II center or family child-care home achieves a higher STARS level. [~~A Type II center or family child care home that achieves a STARS level greater than a Level 1 shall receive an achievement award~~] for each STARS level up to and including the approved STARS level.

(2) A Level 3 or 4 Type II center or family child-care home that continues to be a STARS rated provider shall be eligible for an annual achievement award during the month of their anniversary date as follows:

(a) $250 per year for a Level 3; or

(b) $500 per year for a Level 4.

Section 8 [~~(c) An achievement award shall not be awarded more than one (1) time per STARS level achieved.~~

~~(2)~~] Quality Incentive Awards. To the extent funds are available, the cabinet shall pay quality incentive awards to qualified STARS participants.

(1) [~~Award. (a)~~] A Level 1 STARS rated Type II center or family child-care [~~child care~~] home shall not be eligible to receive a quality incentive award.

(2) [~~(b)~~] A quality incentive award shall be calculated and paid for each child served by the Child Care Assistance Program as described in 922 KAR 2:160.

(3) [~~(c)~~] The following chart shall be used when calculating the amount of a quality incentive award:

STARS Level	Amount per month per child under age three (3)	Amount per month per child age three (3) and over
Level 2	$10	$9
Level 3	$14 [~~$13~~]	$13 [~~$12~~]
Level 4	$17 [~~$15~~]	$16 [~~$14~~]

(4) [~~(d)~~] A quality incentive award shall be paid to a qualified STARS participant at least annually.

Section 9. Enhancement Award. To the extent funds are available the cabinet shall pay enhancement awards to qualified STARS participants.

(1) A Level 4 Type II center or family child-care home shall be eligible for an annual enhancement award of $500 during the month of their anniversary date when the Type II center or family child-care home:

(a) Achieves an average score above 5.5 (five and five-tenths) on the environment assessment; and

(b) Completes the DCC-404E, STARS for KIDS NOW-Level 4 Enhanced Standards Checklist.

Section 10. Interim Report.

(1) Except during a renewal year, a STARS level 2, 3, or 4 Type II center or family child-care home shall complete and submit to the cabinet or its designee prior to the anniversary date a:

(a) DCC-413, STARS for KIDS NOW Interim Report Standards Documentation; and

(b) DCC-414, STARS for KIDS NOW Interim Report Staff Training Documentation, for each staff person.

(2) The cabinet or its designee shall notify a participating Type II licensed or certified family child-care home of requirements in subsection (1) of this section at least ninety (90) calendar days prior to the anniversary date.

Section 11. [~~8.~~] Renewal of a Quality Rating Certificate.

(1) The cabinet or its designee shall notify a participating Type II center or family child-care [~~child care~~] home at least ninety (90) calendar days before expiration of the center or home's quality rating certificate.

(2) A participating Type II center or family child-care [~~child care~~] home shall submit a DCC-405 written request to the cabinet or its designee for a quality rating visit at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) A quality rating certificate shall be renewed by a quality rating visit:

(a) Annually for a Level 1 rated Type II center or family child-care home;

(b) Every two (2) years for a Level 2 rated Type II center or family child-care home;

(c) Every three (3) years for a Level 3 rated Type II center or family child-care home; and

(d) Every four (4) years for a Level 4 rated Type II center or family child-care home.

Section 12. [~~9.~~] Conditions Requiring Reevaluation. (1) Reevaluation of a participating Type II center or family child-care [~~child care~~] home's quality rating certificate and associated level shall be conducted if the:

(a) [~~(1)~~] Location of the Type II center or family child-care home changes;

(b) [~~(2)~~] Type II center or family child-care home requests a reevaluation in accordance with Section 2(4) of this administrative regulation;

(c) [~~or (3)~~] Cabinet or its designee determines a need to reassess the Type II center or the family child-care home's STARS participation or quality rating certificate level due to reports or findings related to a reduction in the Type II center or family child-care home's quality of care or services; or

(d) Type II center or family child-care home fails to complete requirements in Section 10(1) of this administrative regulation.

(2) A decrease in level rating due to a re-evaluation shall reduce the basis of awards in Sections 7, 8, and 9 of this administrative regulation.

Section 13. [~~10.~~] Conditions Requiring Revocation. (1) A Type II center or family child-care [~~child care~~] home's quality rating certificate shall be revoked for:

(a) Closure pursuant to KRS 13B.125, 199.896(4), or [~~and~~] 199 8982(1)(f);

(b) Denial of recertification or relicensure;

(c) A pending suspension or revocation action taken against the Type II center or family child-care home's certificate or license to operate;

(d) Failure to comply with the requirements of 922 KAR 2:160;

(e) Failure to:

1. Comply with payment of a civil penalty levied against the Type II center or family child-care home, if:

a. The Type II center or family child-care home waived the right to appeal the civil penalty; or

b. The civil penalty has been upheld on appeal; or

2. Make payment arrangements for a civil penalty within sixty (60) days and comply with that arrangement; if:

a. The Type II center or family child-care home waived the right to appeal the civil penalty; or

b. The civil penalty has been upheld on appeal; [~~.~~]

(f) Two (2) or more civil penalties levied against the Type II center or family child-care home in the previous twelve (12) months, in accordance with KRS 199 990; or

(g) A change in ownership.

(2) Upon revocation of a quality rating certificate, payment shall cease for:

(a) A quality incentive award;

(b) An enhancement award; and

(c) An annual achievement award [~~Payment of a quality incentive award shall cease upon revocation of a quality rating certificate~~]

Section 14. [~~11.~~] Quality Rating Certificate. A quality rating certificate shall be returned to the cabinet or its designee if.

(1) The certificate is revoked;

(2) The certificate is not renewed; or

(3) The Type II center or family child-care home voluntarily withdraws from the STARS

Section 15. [~~12.~~] Appeals.

(1) If the cabinet or its designee determines that a participating Type II center or family child-care [~~child care~~] home does not meet the rating level standards for which it is certified, the Type II center or family child-care home shall:

(a) Accept a lower rating level; or

(b) Request an administrative hearing in accordance with 922 KAR 1:320, Section 2(11).

(2) Payment of an [~~a quality incentive~~] award in Section 7, 8, or 9 shall be held in abeyance pending resolution of appeal of a reduced quality rating certificate level.

(3) If denial, suspension, or revocation of a Type II center or family child-care [~~child care~~] home's certificate or license to operate is reversed upon appeal, the:

(a) Type II center or family child-care home may reapply for participation in the STARS program; or

(b) Cabinet may reinstate a Type II center or the family child-care home's STARS quality rating certificate and associated level if the:

1. Type II center or family child-care home submits a request for reinstatement; and

2. Type II center's or family child-care home's STARS quality rating certificate and licensure has not expired.

Section 16. [~~13.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-400, Level 1 Rating Certificate Application", edition 9/06;

(b) "DCC-401, STARS for KIDS NOW-Level 1 Standards Checklist", edition 1/08 [~~9/06~~];

(c) "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist", edition 1/08 [~~9/06~~],

(d) "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist", edition 1/08 [~~9/06~~],

(e) "DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist", edition 1/08 [~~9/06~~], [~~and~~]

(f) "DCC-404E, STARS for KIDS NOW-Level 4 Enhanced Standards Checklist", edition 01/08;

(g) "DCC-405, STARS for KIDS NOW-Rating Visit Request Form", edition 07/06.

(h) "DCC-413, STARS for KIDS NOW Interim Report Standards Documentation", edition 01/08; and

(i) "DCC-414, STARS for KIDS NOW Interim Report Staff Training Documentation", edition 01/08.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.922 KAR 2:210

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR. Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type II licensed and certified family child-care homes, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Program quality rating system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a graduated voluntary rating system for Type II licensed and certified family child-care homes; a process for reevaluation of quality ratings, and establishes monetary awards for participants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 194A 050(1) which requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Health and Family Services to promulgate an administrative regulation that implements voluntary quality-based graduated child care rating system for Type II licensed and certified family child care homes; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type II licensed certified family child care homes, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW 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 statute by describing the requirements to participant in the STARS for KIDS NOW Program for Type II licensed and certified family child-care homes.

(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 will conform training and education requirements for Type II licensed and certified family child-care home staff to licensure regulations. This amendment describes an additional achievement award for Level 3 and 4 participants, increases the quality achievement award for Level 3 and 4 participants caring for children who receive CCAP subsidies, and establishes an enhancement award for Level 4 participants with high environment assessment scores. Program participants will be required to complete interim reports. Forms contained in material incorporated by reference are revised.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to mirror training and education requirements for Type II licensed certified family child-care homes to licensure regulations and increase financial incentives to providers to participate and progress in the STARS program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing requirements for a voluntary quality-based graduated child care rating system for Type II licensed and certified family child care homes; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings.

(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 clarifying the requirements for the issuance of a quality rating certificate and ongoing operation of the STARS for KIDS NOW program. The amendment clarifies procedures and responsibilities contained within the administrative regulation and makes technical requirements to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the Office of the Inspector General, Division of Regulated Child Care, as of August 9, 2007, there are 838 family child care home providers and 131 Type II providers. Approximately 123, of both classifications, are currently participating in the STARS for KIDS NOW Quality Rating Program.

(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: This amendment will require STARS for KIDS NOW Quality Rating Program participants to complete and submit an interim report.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3).Monetary costs, if any, for these provisions to Type II licensed or certified family child care home operators are minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amendment, a Type II licensed or certified family child-care home operator will improve the quality of services provided to children in their care and may benefit from STARS for KIDS NOW Quality Rating Program financial awards system.

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

(a)Initially: There are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates initial implementation will require additional funding of $174,800 to pay for increased awards to Type II licensed childcare centers and certified family child-care homes. Funding is available through the existing Tobacco Fund allotment and the Child Care Development Fund federal Grant. Funds for the amendments have been budgeted.

(b) On a continuing basis: There are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates implementation for subsequent years will require additional funding of $174,800 to pay for increased awards to Type II licensed childcare centers and certified family child-care homes. Funding is available through the existing Tobacco Fund allotment and the CCDF federal Grant. Funds for the amendments have been budgeted.

6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: undoing is available through the existing Tobacco Fund allotment and the CCDF federal grant.

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 increase in funds or fees to implement this administrative regulation.

8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: his administrative regulation does not establish any fees or directly or indirectly increase any fees.

9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS Chapter 13B, 199 894, 199.8941, 199.8943, 199.896(4), 199.8982, 199.8992, 199.990, 194A.050(1), 199.8941(1), 199 8943(2)

3. Minimum or uniform standards contained in the federal man-

date. 42 U.S.C. 601-619, 45 C.F.R. 98

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care 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. 42 U.S.C. 601-619, 45 C.F.R. 98, KRS Chapter 13B, 199.894, 199.8941, 199 8943, 199.896(4), 199.8982, 199.8992, 199.990, 194A.050(1), 199.8941(1), 199.8943(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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 revenue for the state or local government either for subsequent years.

(c) How much will it cost to administer this program for the first year? Initially, there are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates initial implementation will require additional funding of $174,800.00 to pay for increased awards to Type II licensed childcare centers and certified family child-care homes. Funds for the amendments have been budgeted.

(d) How much will it cost to administer this program for subsequent years? On a continuing basis, there are additional costs to the Cabinet as a result of the amendment to this administrative regulation. The Division of Child Care completed an analysis and anticipates implementation for subsequent years will require additional funding of $174,800.00 to pay for increased awards to Type II licensed childcare centers and certified family child-care homes. Funds for the amendments have been budgeted.

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:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Repealer)

16 KAR 8:022. Repeal of 16 KAR 8:021.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation repeals 16 KAR 8 021, Fifth-year Program for Renewal of Teaching Certificates, which established the standards for the Fifth-year Program acceptable for certificate renewal until June 30, 2001.

Section 1. (1) Effective September 1, 1995, candidates shall not be admitted to any plan identified in this administrative regulation. Instead, candidates shall apply for admission to one (1) of the plans identified in 16 KAR 8 020.

(2) Candidates who are admitted to a plan in accordance with this administrative regulation before September 1, 1995, shall complete the program by September 1, 2000, and shall document completion of the program with the Division of Certification prior to June 30, 2001.

Section 2. (1) The standards described in this administrative regulation shall be in keeping with one (1) or more of the following purposes:

(a) To improve the professional competency for the position covered by the initial teaching certificate;

(b) To extend the scope of professional competency to some certification area not covered by the initial certificate; and

(c) To obtain preparation-certification required for professional advancement to a higher position.

(2) The preparation program required for the renewal of teaching certificates shall require completion of one (1) of the plans described in the following sections.

Section 3. The Plan I Fifth-year Program shall be the completion of a master's degree leading to a standard teaching certificate from a regionally accredited college or university or from any foreign institution recognized by its government for teacher education purposes.

Section 4. The Plan II Fifth-year Program shall be the completion of a master's degree in a professional education specialty from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 5. The Plan III Fifth-year program shall be the completion of a master's degree in an academic subject identified in the teacher certification requirements as a teaching field from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 6. The Plan IV Fifth-year Program shall consist of a program completed in accordance with the following guidelines:

(1) The Plan IV Fifth-year Program shall be planned individually with each applicant by the teacher education institution which shall be an institution approved for offering programs leading to the standard teaching certificates.

(2) The Plan IV Fifth-year Program shall consist of thirty-two (32) semester hours of credit earned above and beyond the bachelor's degree and the four (4) year program of preparation required for a provisional certificate, except that persons who complete a mandated dual certification program shall be allowed to count toward the Plan IV Fifth-year Program those credits in the second certification area which are beyond those required for a bachelor's degree and certification in the first area.

(3) The academic standing for the thirty-two (32) semester hour program shall be no less than is required at the planning institution for the teacher education graduates. The total program shall include;

(a) At least eighteen (18) semester hours earned at the planning institution;

(b) At least twelve (12) semester hours of graduate level course work;

(c) At least twelve (12) semester hours of professional education; and

(d) At least twelve (12) semester hours from the area of the teacher's specialization.

(4) Once the Plan IV Fifth-year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(5) Course work earned by the applicant prior to planning the Fifth-year Program may be evaluated for acceptance by the planning institution.

(6) Credit earned by correspondence shall not apply toward the Plan IV Fifth-year Program.

Section 7. (1) The Plan V Fifth-year Program shall follow the same guidelines as for the Plan IV Fifth-year Program described in Section 6 of this administrative regulation except for the modifications described and permitted in this section.

(2) The Plan V Fifth-year Program shall include thirty-two (32) semester hours of credit, except that continuing education units (CEU) or professional staff development units (PSDU) may be substituted under an equivalent formula for up to twelve (12) semester hours of the total program.

(3) The college credits shall include twelve (12) semester hours in professional education and six (6) semester hours from the area of the teacher's specialization.

(4) At least eighteen (18) semester hours of credit shall be earned at the planning institution.

(5) Twelve (12) semester hours of the total program shall be for graduate level credit.

(6) The Plan V Fifth-year Program shall be planned by the teacher education institution individually with each applicant in terms of the position held by the applicant or in terms of a position anticipated by the applicant. Standard college credits earned by the applicant prior to planning the program shall be evaluated for possible acceptance by the planning institution; however, all preparation recorded as continuing education units or as professional staff development units shall be included as a component of applicant's planned program as approved in advance for acceptance as a part of the Plan V Fifth-year Program.

(7) The grade point standing for the college credit portion of the Plan V Fifth-year Program shall be no less than that required at the planning institution for teacher education graduates.

(8) The planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(9) Credit earned by correspondence shall not apply toward the Plan V Fifth-year Program.

(10) The continuing education unit as used in the Plan V Fifth-year Program shall be the continuing education unit now in use by accredited colleges and universities and shall include ten (10) contact clock hours of participation in an organized professional experience under responsible sponsorship, capable direction, and qualified instruction. For purposes of the Plan V Fifth-year Program the studies and experiences for continuing education units shall be planned in advance to insure relevance to the total program being planned with the applicant. For purposes of the Plan V Fifth-year Program two (2) continuing education units shall be applied on the same basis as one (1) semester hour of college credit.

(11) The professional staff development unit as used in the Plan V Fifth-year Program shall be awarded for participation in short term workshops organized by the local school district or by the State Department of Education and shall require a minimum of ten (10) contact clock hours of participation for each unit. For purposes of the Plan V Fifth-year Program two (2) professional staff development units shall be applied on the same basis as one (1)

semester hour of college credit. For this purpose the local district in-service education committee established under 704 KAR 3:035 shall approve in advance the local district workshops that are to be offered for professional staff development units on the basis of the following criteria:

(a) There is an assessment of educational need based upon input from the persons who are to be participants in the workshop activity;

(b) There is a statement of objectives relating to the assessment;

(c) The workshop activities and the study materials are appropriate to the attainment of the objectives. Participants shall have input into the design of the workshop;

(d) The instructor has appropriate expertise for the nature of the workshop; and

(e) Appropriate records are prepared using forms authorized by the State Department of Education. Each participant shall be given an individual record of PSDU's granted.

TOM STULL, Chairperson

APPROVED BY AGENCY: September 24, 2007

FILED WITH LRC: October 2, 2007 at 3 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2007 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 26, 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. 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 November 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 16 KAR 8:021 which established the standards for the Fifth-year Program acceptable for certificate renewal between September 1, 1995 and September 1, 2000.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because 16 KAR 8:021 has been replaced by 16 KAR 8.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 161.028 and KRS 161.030 vest the authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal 16 KAR 8.021 which contained programs that are no longer approved by the Education Professional Standards Board as of September 30, 2000. Any individual who completed these programs was to document their completion with the Division of Certification prior to June 30, 2001. This administrative regulation will therefore repeal a regulation that is no longer pertinent.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation should not affect any stakeholders because the regulation it is repealing has not been pertinent since June 30, 2001.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No entities will be affected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No entities will be affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No entities will be affected.

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

(a) Initially: No cost is associated with this regulation.

(b) On a continuing basis: No cost is associated with this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No cost is 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 fees or funds will be affected.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? No, this regulation will repeal 16 KAR 8.021 which has not been applicable since June 30, 2001.

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? Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? No cost will be associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No cost will be associates 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 State Board of Licensure for Professional Engineers and Land Surveyors
(New Administrative Regulation)

201 KAR 18:196 Continuing professional development for engineers.

RELATES TO: KRS 322.290(16)
STATUTORY AUTHORITY: KRS 322.290(4), 322.290(16)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(16) requires the board to adopt a program of continuing education for professional engineers This administrative regulation implements the continuing professional development program mandated by KRS 322 290(16) for professional engineers.

Section 1. Definitions. (1) "Continuing professional development" (CPD) means participation in activities beyond the basic educational requirements that;
(a) Provide specific content to improve the professional engineer's competence;
(b) Encourage acquisition of new skills and knowledge required to maintain competence;
(c) Strengthen the professional engineer's critical inquiry and balanced judgment;
(d) Raise the ethical standards within the professional community; and
(e) Which meet the requirements established by the provisions of this administrative regulation.
(2) "Professional development hour" or "PDH" means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.
(3) "Reporting period" means the two (2) calendar years preceding the June 30 deadline for renewal of license.
(4) "Licensee" means a person licensed as a professional engineer.
(5) "Dual licensee" means a person licensed as both a professional engineer and a professional land surveyor.

Section 2. Program Structure. (1) Except as provided in Section 6 of this administrative regulation, a licensee shall complete a minimum of thirty (30) PDH units each reporting period.
(2) If a licensee exceeds the requirement, a maximum of fifteen (15) PDH units may be carried forward to the next reporting period.
(3) PDH units earned by a dual licensee under this administrative regulation may also be used to meet the land surveyor requirements under 201 KAR 18:192 if such PDH units meet the requirements of that administrative regulation.
(4) Failure to earn the required PDH units shall constitute unprofessional conduct.

Section 3. Criteria for Professional Development. (1) PDH units may be earned by successful completion of the following activities:
(a) College courses;
(b) Continuing education courses;
(c) Correspondence, televised, videotaped, distance learning, and other short courses/tutorials;
(d) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences;
(e) Teaching or instructing in paragraphs (a) through (d) of this subsection;
(f) Authoring published papers, articles, books, or accepted licensing examination items;
(g) Active participation in professional or technical societies; or
(h) Patents.
(2) Activities described in subsection (1) of this section shall:
(a) Be relevant to the practice of engineering;
(b) Contain technical, ethical, or managerial subjects;
(c) Be an organized program of learning;
(d) Be conducted by individuals with education, training, or expertise; and
(e) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.
(3) CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.
(4) PDH units shall be converted as follows:
(a) One university semester hour shall equal forty-five (45) PDH units.
(b) One university quarter hour shall equal thirty (30) PDH units.
(c) One continuing education unit shall equal ten (10) PDH units.
(d) For teaching, apply a multiple of two (2).
(e) Each published paper, article, or book shall equal ten (10) PDH units.
(f) Active participation in professional or technical society shall equal two (2) PDH units for each organization.
(g) Each patent shall equal ten (10) PDH units.

Section 4. Determination of credit. (1) The board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.
(2) Credit for college or university courses will be based upon course credit established by the college or university.
(3) Credit for qualifying seminars and workshops will be based upon one (1) PDH for each fifty (50) minutes of instruction or presentation.
(4) Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.
(5) Credit for correspondence, televised, videotaped, distance learning, and other short courses/tutorials will be the equivalent PDH units recommended by the program author subject to board review.
(6) Teaching credit is valid for teaching a course or seminar for the first time only.
(7) Credit for active participation in professional or technical societies requires that the licensee serve as an officer or actively participate in a committee of the organization. PDH units are not earned until the end of each year of service is completed.

Section 5. Recordkeeping. (1) The licensee is responsible for maintaining records used to support PDH units claimed. Records required include, but are not limited to:
(a) A log showing the date of the activity, sponsoring organization, location, activity title, description, presenter's name, and PDH units earned; and
(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.

Section 6. Exemptions and Extensions. (1) A licensee shall be exempted for the calendar year in which initially licensed by the board.
(2) Individuals who have selected inactive or retired status are exempt from the requirements of this administrative regulation
(3) A licensee who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the reporting period in which the disability, illness, or extenuating circumstance occurs.
(4) The board may grant an extension of time to fulfill the CPD requirement for an extenuating circumstance.
(5) An exemption or extension request shall be made in writing with supporting documentation.

Section 7. Reinstatement. Before a license is reinstated by the board, a former licensee shall earn the PDH units required for each reporting period the license was revoked, suspended, or expired, up to a maximum of sixty (60) PDH units.

Section 8. Reporting. (1) On the biennial renewal form, licensees shall certify that they have or have not met the requirements of this administrative regulation.
(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.

Section 9. Audits. (1) Compliance with the CPD requirements shall be determined through a random selection process or as the result of information provided to the board.

(2) Licensees who are subjects of an investigation pursuant to KRS 322.190 may be subjected to the audit requirements of this section.

(3) Licensees selected for audit shall provide the board with documentation as described in Section 5 of this administrative regulation within thirty (30) days of the board's request.

(4) If the board disallows credit, or if the PDH units reported are less than thirty (30), the licensee shall have 180 calendar days after notification to substantiate the original claim or earn other PDH units to meet the requirement.

(5) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the licensee to disciplinary action.

(6) Audits resulting in a determination of noncompliance shall subject the licensee to an automatic audit the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

Section 10. Delegation. The board may delegate its authority in this administrative regulation to a board committee, ad hoc committee, or staff.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: October 10, 2007

FILED WITH LRC: October 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This proposed regulation establishes the requirements for a continuing education program for professional engineers.

(b) The necessity of this administrative regulation: KRS 322.290(16) requires the board to establish a continuing education program for professional engineers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. The proposed regulation establishes the requirements for a program mandated by KRS 322.290(16).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation will assist board staff in administering the program by establishing the requirements of the program. These requirements will also allow licensees to know what is required of them.

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

(a) How the amendment will change this existing administrative regulation: N/A; not an amendment.

(b) The necessity of the amendment to this administrative regulation: N/A; not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: N/A; not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: N/A; not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will affect the approximately 11,000 licensed professional engineers who will now have to obtain continuing education as mandated by KRS 322 290(16).

(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 board will have to administer the new continuing education program. No other regulated entities are affected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to individual licensees to obtain the required continuing education will vary greatly. There will be numerous opportunities to obtain credits at no cost or a minimal cost. Many are currently obtaining continuing education credits because they are licensed in states already with the requirement so there additional cost would be zero. There will be no costs to any other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This proposed regulation will require professional engineers to obtain continuing education that will improve their competence and allow them to acquire new skills and knowledge in order to better protect the public.

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

(a) Initially: $5,000

(b) On a continuing basis: $10,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal 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 funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this proposed regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(16)

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. Approximately $15,000 of expenditures for the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

with no effect on revenues. There are no revenue or expenditure effects for the other government agencies.

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

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

(c) How much will it cost to administer this program for the first year? $15,000

(d) How much will it cost to administer this program for subsequent years? $10,000 annually.

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 State Board for Proprietary Education
(New Administrative Regulation)

201 KAR 40:025. Fees.

RELATES TO: KRS 165A.340(3), 165A.350(3), 165A.360(1), (2), (9), 165A.400, 165A.450

STATUTORY AUTHORITY: KRS 165A.340(3),165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3) authorizes the board to promulgate regulations to administer the provisions of KRS 165.310 to 165.390, including establishment of fees and other charges. This administrative regulation establishes the fees for applications for initial licensure and renewal of licensure for resident and non resident schools, issuance of initial permits and renewals for agents of proprietary schools, award of associate degree, change of the name of a proprietary school, change of location of a proprietary school, addition of a new certificate or diploma program, revision of an existing program, transfer of ownership, transcript requests from a closed proprietary school, and contributions to the student protection fund.

Section 1. Definitions. (1) "Net tuition income" means the total amount of tuition earned by the resident school less any tuition refunds to the students during the immediate past calendar year, January 1 through December 31.

(2) "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change in control.

(3) "Enrollment" for purposes of this administrative regulation means the procurement directly or indirectly of a student's signature on an application or enrollment agreement in accordance with KRS 165A.310(4).

Section 2. Initial Licensure Fee and Student Protection Fund Contribution for Schools. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be $300, and shall accompany Form PE-15, "Application for Resident School."

(2) The one-time contribution to the student protection fund for a school residing in and doing business in Kentucky shall be $300, to be paid at the time of initial application.

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be $900, and shall accompany Form PE-16, "Application for Non-Resident School."

(4) The one time contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be $900, to be paid at the time of initial application.

(5) The initial licensure fee and student protection fund contribution shall not be prorated or refundable.

Section 3. Annual Renewal License Fee for Schools. (1) The annual renewal license fee for a school residing in and doing business in Kentucky shall be $300 for schools whose net tuition income does not exceed $50,000, plus fifteen (15) for each additional $10,000 of net tuition income in excess of $50,000, not to exceed $2,000. The annual renewal license fee shall accompany Form PE-17, "Application for License Renewal Resident School."

(2) The annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be $900. The annual renewal fee shall accompany Form PE-18, "Application for License Renewal Non-Resident School."

(3) The annual renewal license fees for both resident and non-resident schools shall not be prorated or refundable.

Section 4. Annual Permit Fees for Agents. (1) The annual permit fee for each agent working for a school licensed by the board shall be $150 and shall accompany either Form PE-19, "Application for Permit to Act as an Agent," or Form PE-20, "Application for Renewal of Permit to Act as an Agent," whichever is applicable

(2) The annual permit fee and the annual permit renewal fee for agents shall not be prorated or refundable.

Section 5. Transfer of Ownership of a School. (1) The fee for recording transfer of ownership of a school licensed by the board in accordance with 201 KAR 40.160 shall be $500, and shall accompany Form PE-21, "Application to Transfer Ownership of a School."

(2) The fee for recording transfer of ownership shall not be prorated or refundable.

Section 6. Change of Name of a School. (1) The fee for approval of change of name of a school shall be $100, and shall accompany Form PE-22, "Application to Change the Name of a School."

(2) The fee for approval of a school's name change shall not be prorated or refundable.

Section 7. Change of location of a school. (1) The fee for approval of a change of location of a school shall be $500, and shall accompany Form PE-23, "Application to Change the Location of a School."

(2) The fee for approval of a change of school location shall not be prorated or refundable.

Section 8. Application to Award an Associate Degree. (1) The fee for an application to award an associate degree in accordance with 201 KAR 40.020 shall be $500 per degree, and shall accompany Form PE-10, "Application to Award an Associate Degree," referenced by 201 KAR 40:020. In the event a school simultaneously submits multiple applications for approval of associate degrees, the fee shall not exceed $1,000 per school.

(2) The fee for application to award an associate degree shall not be prorated or refundable.

Section 9. New Program. (1) The fee for approval of a new certificate or diploma program shall be $150, and shall accompany Form PE-14, "Application for a New Program."

(2) The fee for approval of a new certificate or diploma program shall not be prorated or refundable.

Section 10. Program Revisions - Certificate, Diploma, and Degree. (1) The fee for approval to revise twenty-five percent (25) or more of any existing program shall be $150, and shall accompany Form PE-13, "Application to Revise an Existing Program for 25% or More," as referenced in 201 KAR 40.020.

(2) The fee for approval to revise an existing program shall not be prorated or refundable.

Section 11. Maximum fee. A school with multiple locations simultaneously filing applications for Board approval for more than one transfer of ownership, change of name, change of location, addition of a new program, revision of an existing program or associate degree, shall not pay more than $1,000.

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

(a) "Application for a New Program", Form PE-14, 2007 edition;

(b) "Application for Resident School" Form PE-15 2007 edition;

(c) "Application for Non-Resident School", Form PE-16, 2007 edition;

(d) "Application for License Renewal Resident School", Form PE-17, 2007 edition;

(e) "Application for License Renewal Non-Resident School", Form PE-18, 2007 edition;

(f) "Application for Permit to Act as an Agent", Form PE-19, 2007 edition;

(g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2007 edition;

(h) "Application to Transfer Ownership of a School", Form PE-2, 2007 edition;

(i) "Application to Change the Name of a School", Form PE-22, 2007 edition; and

(j) "Application to Change the Location of a School", Form PE-23, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p m.

This is to certify that the Chair of the Kentucky State Board for Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statue, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair
ROBERT BURNSIDE, Secretary

APPROVED BY AGENCY: September 6, 2007

FILED WITH LRC: September 20, 2007 at 1 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 20, 2007, at 10 a m., local time, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the fees for proprietary schools and their agents. The fees cover a wide range of activities from initial licensure to renewal to changes of ownership and degrees or programs offered.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to set forth the fees to be paid by a proprietary school or agent, residing in Kentucky or doing business in Kentucky thereby placing the schools on notice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish fees and other charges consistent with the provisions of KRS Chapter KRS 165A pursuant to KRS 165A.340(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the board to establish the fee structure associated with operating a proprietary school. These fees include: initial licensure fee for a proprietary school; contribution to the student protection fund; renewal fees; transfer of ownership; change of name or location; associate degree application; new programs; program revisions; and agent fees. Said detailed criteria provides additional clarity for applicants and licensees and will reduce the number of questions and inquiries made to board staff.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation and therefore not applicable.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation and therefore not applicable.

(c) How the amendment conforms to the content of the authorizing statutes. This is a new administrative regulation and therefore not applicable.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation and therefore not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 140 licensed proprietary schools across the Commonwealth of Kentucky as well as the approximately 25 applicants for licensure. This regulation will also impact the 198 licensed agents and approximately 50 applicants for licensure as agents who apply each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Applicants for licensure must complete the appropriate application forms and pay the fees set forth in this administrative regulation, $300 for resident schools, plus a one-time $300 contribution to the student protection fund; nonresident schools must pay a $900 fee, plus a one-time $900 contribution to the student protection fund. All other fees set forth in this administrative regulation are for licensees, including renewal fees, transfer of ownership, new programs, etc. The appropriate applications to be completed are also specified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Annual renewal for resident schools whose net tuition income is less than $50,000 is $300. For every additional $10,000 in net tuition income the school shall pay an additional $15. The total annual renewal fee shall not exceed $2,000. The annual license renewal fee for non resident schools shall be $900. The annual permit fee for agents is $150. The annual renewal fee for agents is $150. The fee for transfer of ownership is $500. The fee for a school name change is $100. The fee for a change of school location is $500. The fee for application to award an associate degree is $500. The fee for a new certificate or diploma program is $150. The fee for a program revision is $150.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Completing the proper forms and paying the specified fees will assist the applicants by speeding up their approvals and assist licensees in maintaining their status.

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

(a) Initially: No additional costs will be encountered by the implementation of this new administrative regulation.

(b) On a continuing basis: No additional costs are anticipated.

(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 licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes the fee structure for operating a proprietary school.

(9) TIERING: Is tiering applied? Tiering was applied as the fee structure differentiates between proprietary schools residing and doing business in Kentucky, and proprietary schools not residing in Kentucky, but doing business in the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2 What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Board for Proprietary Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100(3), 165A.340(3), 165A.350(3), 165A.360(1), (2), and (9), 165A.400, 165A.450

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 State Board for Proprietary Education
(New Administrative Regulation)

201 KAR 40:027. School record keeping requirements.

RELATES TO: KRS 165A.370(1)
STATUTORY AUTHORITY: KRS 165A 340(7), 165A.400
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370(1) sets forth the types of records which shall be maintained by a proprietary school. KRS 165A.340(7) and 165A.400 empower the Board to promulgate necessary administrative regulations to promote efficiency of operations relating to proprietary schools. This administrative regulation specifies the manner in which documents shall be maintained and submitted to the board.

Section 1. Minimum Record Keeping Requirements. Each licensed proprietary school shall maintain a separate file for each student. At a minimum, the school shall maintain the following documents for each student:

(1) Student application for admission;
(2) Enrollment agreement;
(3) Transcript or other academic record;
(4) Student account,
(5) Placement record, and
(6) Attendance record.

Section 2. Annual Renewal Record Keeping Requirements. (1) Effective with the 2008 annual license renewal, all proprietary schools shall submit electronic copies of all students' transcripts and student accounts of each student who has attended the school since the end of the immediately preceding renewal period. The documentation shall be submitted simultaneously with the annual renewal application and shall be organized alphabetically according to the students' last names. (Forms PE-17 and PE-18 are referenced in 201 KAR 40.025, Section 3.) Acceptable electronic formats are Microsoft Office 97 or later versions, tif, pdf, jpg, jpeg, or other electronic format acceptable to the board.

(2) If there is a change of ownership or a school closure, electronic files containing copies of all students' transcripts and student accounts shall be submitted to the Board within thirty (30) days of the transfer or closure.

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statue, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair
ROBERT BURNSIDE, Secretary

APPROVED BY AGENCY: September 6, 2007
FILED WITH LRC: September 20, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 20, 2007, at 11 a.m., local time, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601; 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 administrative regulation specifies the manner in which documents pertaining to student records shall be classified, maintained and reported to the board.

(b) The necessity of this administrative regulation: It is imperative that schools maintain proper documentation of each student's academic and financial records. This administrative regulation sets forth the expectations and details for record maintenance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 165A.370(1) sets forth the types of records which shall be maintained by a proprietary school. KRS 165A.340(7) and 165A.400 empower the Board to draft necessary administrative regulations to promote efficiency of operations relating to proprietary schools. This administrative regulation utilizes the authority granted by the Legislature to ensure proper record keeping which will benefit both the schools and the students which attend them.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote organization and proper mainte-

nance of student records increasing the board's oversight capabilities and ability to respond to student requests in the event of a closure or other emergency.

(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 and therefore not applicable.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation and therefore not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation and therefore not applicable.

(d) How the amendment will assist in the effective administration of the statutes. This is a new administrative regulation and therefore not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 140 licensed proprietary schools across the Commonwealth of Kentucky as well as the approximately 25 applicants for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment. The licensed proprietary schools will now be required to submit their student records electronically. This will entail keeping electronic copies of the students' transcripts, enrollment agreements and financial records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): While it is impossible to provide an exact cost, it is anticipated that it will be minimal. Larger schools are already utilizing electronic databases and programs. Smaller schools are likely to have access to scanning equipment which will enable them to create the required electronic files. It may initially cost the licensees some manpower hours to compile the records but after the initial filing, it should not be burdensome.

(c) As a result of compliance, what benefits accrue to the entities identified in question (3): This new administrative regulation will promote more efficient recordkeeping and this will assist the schools by answering their record maintenance questions. In addition, by providing the Board access to these basic records, the Board is better-equipped to assist the public if a school closes or has its records destroyed by fire, flood, etc.

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

(a) Initially: No additional costs will be encountered by the implementation of this new administrative regulation.

(b) On a continuing basis: No additional costs are anticipated.

(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 licensees and applicants.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation as all schools are required to adhere to the recordkeeping requirements to ensure proper documentation.

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 State Board for Proprietary Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 165A.340(7) and 165A.400

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 State Board for Proprietary Education
(New Administrative Regulation)

201 KAR 40:150. Bond requirements for agents and schools.

RELATES TO: KRS 165A.350(3)-(7), (10), 165A.360(2)-(5), (10)

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.350(3), 165A 360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3) and 165A.400 authorize the board to promulgate regulations to administer the provisions of KRS 165.310 to 165.390, including establishment of fees and other charges. KRS 165A.350 requires all proprietary schools to maintain a surety bond for the agents and the schools. KRS 165A.350(3)-(7) sets forth the range of bonding requirements for agents and schools and requires the board to establish the bond amounts. This administrative regulation sets the surety bond requirements to be maintained on agents and schools.

Section 1. Surety Bond. (1) A school shall:

(a) Complete "School Surety Bond" Form PE-26; and

(b) Maintain a school surety bond in the amount of $20,000.

(2) In lieu of the school surety bond, the Board shall accept an irrevocable letter of credit made in favor of the Kentucky State Board for Proprietary Education from a verifiable licensed financial institution in the amount of $20,000.

Section 2. Agent Surety Bond. (1) A school shall:

(a) In accordance with KRS 165A.350(3) maintain an agent surety bond, or in the case of multiple agents, maintain a blanket agent surety bond, in the amount of $5,000 for each agent employed by the school; and

(b) Complete Form PE-27, "Blanket Agent Surety Bond."

(2) In lieu of the agent surety bond, the board shall accept an irrevocable letter of credit from a licensed financial institution equal to the amount specified above, made in favor of the Kentucky State Board for Proprietary Education.

Section 3. Multiple School Campuses. (1) Each school campus

for any school residing in and doing business in Kentucky for licensing and bonding purposes shall be considered a separate school and shall be required to provide a separate school surety bond and an agent surety bond.

(2) Each non residential school doing business in Kentucky shall be required to provide a school surety bond and an agent surety bond.

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

(a) "School Surety Bond", Form PE-26, 2007 edition; and

(b) "Blanket Agent Surety Bond", Form PE-27, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p m.

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statue, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair
ROBERT BURNSIDE, Secretary

APPROVED BY AGENCY: September 6, 2007

FILED WITH LRC: September 20, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 20, 2007, at 1 p m., local time, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, 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 administrative regulation sets forth the bond requirements for proprietary schools and their agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to put both the proprietary schools and their agents on notice of the bonding requirements necessary to obtain and maintain licensure with the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to set the bond requirements for proprietary schools and their agents in amounts not less than $20,000 and $5,000, respectively pursuant to KRS 165A.360(2) and 165A.350(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the bond requirements for proprietary schools and their agents thereby placing applicants and licensees on notice of the bonding requirements necessary to obtain and maintain licensure. The regulation should clarify common questions regarding coverage for multiple agents and campuses.

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

(a) How the amendment will change this existing administrative regulation: N/A-new regulation.

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A-new regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 140 proprietary schools and 200 agents are currently licensed in the Commonwealth of Kentucky. In addition, this administrative regulation will impact the approximately 25 applicants for proprietary school licenses and 50 new agents in the state each year.

(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 statutes require proprietary schools and agents to maintain a surety bond. This administrative regulation requires schools and agents to complete a form and submit the requisite bond or letter of credit to comply with the statutory requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each school will be required to provide either a $20,000 school surety bond or letter of credit in that amount. Each agent must provide proof of either a $5,000 bond or letter of credit. The board chose these amounts based upon the statutory minimums.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation is proof of a necessary component for obtaining and maintaining licensure. The administrative regulation will assist the schools and their agents by setting forth the appropriate bond requirements necessary for obtaining and maintaining licensure in Kentucky in accordance with the statutory scheme.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation. The licensees have always been required to pay this cost as it is a statutory requirement. Therefore, no costs are associated with implementation.

(b) On a continuing basis: No additional cost is expected to be associated with this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees 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 increase fees either directly or indirectly. The minimum amount of school surety bonds and agent surety bonds are set by statute and adopted by the board in this administrative regulation. The board chose to require the minimum amount instead of a higher bond amount. There are no indirect fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? No tiering was not applied as the board affirmed usage of the minimum statutory bonding amount for both proprietary schools and their agents.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board for Proprietary Education

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164A.360(2), 165A.350(3)

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 State Board for Proprietary Education
(New Administrative Regulation)

201 KAR 40:155. School closing process.

RELATES TO: KRS 165A 390(5)

STATUTORY AUTHORITY: KRS 165A.390(5), 165A 400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the Board to promulgate regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.390(5), prior to discontinuance of operations, a school shall convey student records to the board. The board shall set forth which records are to be conveyed, the manner they are to be conveyed, where they will be stored and the length of time for storage. This administrative regulation sets forth the specific responsibilities of a licensed school when it discontinues operations in accordance with KRS 165A.390(5).

Section 1. Definitions. (1) "Academic records" means records pertaining to academic matters, including, but not limited to, enrollment agreements, contracts, transcripts, syllabi, catalogs, course listings, and attendance records whether maintained in paper or electronic form.

(2) "Discontinuance of operation" means ceasing to operate as a school in the ordinary course of business, or in accordance with the minimum standards and requirements set forth in KRS 165A.370, or in a manner whereby students are unable to complete the course or courses as scheduled.

(3) "Financial aid records" means records pertaining to financial aid matters including, but not limited to, applications for financial aid, award notices, disbursement amounts, refunds, student accounts, and loan promissory notes.

(4) "Financial records" means records pertaining to financial matters including, but not limited to, ledger cards to include charges, credits, disbursements, refunds, and other financial information.

Section 2. Procedures for Discontinuance of Operations and Conveyance of Student Records. (1) A school shall notify the board in writing of its intent to discontinue operations at least ten (10) business days prior to discontinuation of operations.

(2) A school shall simultaneously submit to the board and the surety or financial institution notification of cancellation of school surety bonds, agent surety bonds, or letters of credit.

(3) When a school notifies the board of its intention to close, it shall make arrangements with the board to forward all student transcripts, financial aid records, and financial records to the offices of the board.

Section 3. Immediate/Precipitous School Closure. In the absence of a notification of the intent to close, upon determination by the board that a school has discontinued operations, a subpoena shall be issued in accordance with KRS 165A.340(8) for the following records:

(1) Academic records of current and former students who attended the school within the last two (2) years prior to closure;

(2) Transcripts of former students who attended the school more than two (2) years prior to closure;

(3) Financial aid records of current and former students;

(4) Financial records of current and former students; and

(5) Any other document subpoenaed by the board or its designee.

Section 4. Retention of Records by the Board. (1) The board shall retain the original documents, or true and accurate copies, of transcripts and all other documentation received pursuant to Section 2 above, in accordance with the board's records retention schedule developed with the Kentucky Department of Libraries and Archives.

(2) Documents obtained by the board pursuant to Section 2 of this administrative regulation shall be deemed state records under KRS 61 870 to 61 884 and subject to KRS 61.878(1)-(5).

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statue, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair

ROBERT BURNSIDE, Secretary

APPROVED BY AGENCY: September 6, 2007

FILED WITH LRC: September 20, 2007 at 1 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 20, 2007, at 2 p.m., local time, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601; 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 administrative regulation sets forth responsibilities of a licensed school to convey all student records to the board when it discontinues operations

(b) The necessity of this administrative regulation: This administrative regulation is necessary to put the proprietary schools on

notice of the proper handling of student records and their responsibilities when they discontinue operations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: All licensed proprietary schools are required by KRS 165A.390(5) to convey all records to the board prior to discontinuation of operations. The board has authority to promulgate regulations pursuant to KRS 165A.400.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the specific records to be forwarded to the Board and the manner in which the records shall be maintained. The regulation should clarify common questions regarding school closures and records retention.

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

(a) How the amendment will change this existing administrative regulation: N/A - new regulation.

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A - new regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 140 proprietary schools are currently licensed in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The statutes require proprietary schools to maintain student records. When a school closes students often find it difficult to obtain copies of their records. This administrative regulation requires schools to forward specific records to the Board for safekeeping prior to closure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School closings are rare and statistics are not available to specifically answer this question. The cost of shipping these documents to the Board would vary depending upon the size and location of the school

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will benefit the public that attends proprietary schools and build goodwill with the schools.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation. The licensees have always been required by statute to forward their records to the board for safekeeping.

(b) On a continuing basis No additional cost is expected to be associated with this administrative regulation on a continuing basis. As long as a school stays open they will not incur any costs associated with this regulation.

(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 licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees 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 increase fees directly. The only potential indirect fees associated with this administrative regulation are the costs associated with forwarding the records to the board in the event a school discontinues operations.

(9) TIERING: Is tiering applied? Tiering was not applied as the obligation to forward records when a proprietary school closes shall be imposed upon any school prior to cessation of operations.

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 State Board for Proprietary Education.

3.Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.390(5), 165A.400.

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 State Board for Proprietary Education
(New Administrative Regulation)

201 KAR 40:160. Transfer of ownership, change of location, change of name, revision to existing programs.

RELATES TO: KRS 165A.360(2), (7), (9), 165A.370(1), (2)

STATUTORY AUTHORITY: KRS 165A 340(7), 165A.360(2), (9), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the Board to promulgate regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.360(9) certificates of approval issued by the Board are transferable. KRS 165A.370(1)(b) and (j) provide the board with the authority to ensure that schools have all the necessary equipment to operate. When a school's ownership is transferred the board requires the new owner to notify the board in order that an inspection can be made to ensure that the facility remains capable of providing the contracted for education. The board needs to be apprized of this information to stay current regarding its licensees. This administrative regulation governs the procedures that a school must follow to transfer ownership, change the location, change the name of the school, or revise an existing program for twenty-five (25) percent or more.

Section 1. Transfer of Ownership. A school which transfers ownership shall: (1) File a completed, signed and dated "Application to Transfer Ownership of a School," (Form PE-21), referenced by 201 KAR 40:025, for board approval within ten (10) days following the effective date of transfer. It is recommended that schools submit this form prior to transfer;

(2) Pay by check or money order a transfer fee as set forth in 201 KAR 40:025, Section 5; and

(3) Submit a copy of legal evidence showing the transfer of ownership agreement and evidence of purchase.

Section 2. Change of Location. (1) A school which changes location shall at least thirty (30) days prior to the change of location:

(a) File a completed, signed, and dated, "Application to Change the Location of a School," (Form PE-23), referenced by 201 KAR 40.025, for board approval; and

(b) Pay by check or money order an application fee for the change of location set forth in 201 KAR 40.025, Section 7.

(2) An inspection shall be conducted by a member of the board or its designee and submitted to the Board for approval. Schools that fail to meet minimum statutory and regulatory standards will be provided a list of corrective measures to be completed prior to operation of the school.

Section 3. Change of Name of a School. (1) A school which changes its name shall at least (30) days prior to the change of name:

(a) File a completed, signed, and dated, "Application to Change the Name of a School," (Form PE-22), referenced by 201 KAR 40:025, for board approval; and

(b) Pay by check or money order an application fee for a change of name as set forth in 201 KAR 40:025, Section 6.

Section 4. Revise An Existing Program. (1) A school which revises an existing program for twenty-five (25) percent or more, shall at least thirty (30) days prior to the next board meeting:

(a) File a completed, signed, and dated, "Application to Revise an Existing Program for 25% or More," (Form PE-13), referenced by 201 KAR 40.020, for board approval; and

(b) Pay by check or money order the fee as set forth in 201 KAR 40:025, Section 10.

(2) A school which revises an existing program for less than twenty-five (25) percent shall file a completed, signed and dated, "Notification to Revise an Existing Program For Less Than 25%," (Form PE-12), referenced by 201 KAR 40:020, prior to the effective date of change.

Section 5. Expansion of School Facilities. (1) If a school expands the space of an approved location, the school shall notify the Board in writing at least ten (10) days prior to occupancy.

(2) If a school utilizes a space, other than an approved location, on an on-going basis, which is already approved for public use, including, but not limited to, a hotel, library, or convention center, the school shall notify the board in writing.

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statue, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair
ROBERT BURNSIDE, Secretary

APPROVED BY AGENCY: September 6, 2007

FILED WITH LRC: September 20, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 20, 2007, at 3 p.m., local time, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601; 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 administrative regulation sets forth the requirements for proprietary schools that transfer ownership, change location, change the name of the school or revise existing programs in twenty-five percent or more.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to put the proprietary schools on notice of the requirements for changing names, locations, etc. of a school. The board needs to be apprized of this information to stay current regarding its licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 165A.360(9) certificates are transferable. KRS 165A.370(1)(b) and (j) provide the board with the authority to ensure that schools have all the necessary equipment to operate. When a school's ownership is transferred the board requires the new owner to notify the board in order that an inspection can be made to ensure that the facility remains capable of providing the contracted for education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the bond requirements for transferring ownership, etc which provides both the licensee and the board with essential information in a continuing effort to protect the public.

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

(a) How the amendment will change this existing administrative regulation: N/A-new regulation.

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A-new regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 140 proprietary schools are licensed by the board in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any school that transfers ownership, changes its location or name, or revised an existing program twenty-five percent or more, is required to complete the appropriate form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be minimal as the forms are seeking information which is readily available to the owners and should not result in additional expense unless a subsequent inspection finds problems with the facility, etc which need to be repaired.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the licensed schools will have clear and accurate records of ownership and the programs offered in the board office. This protects both the licensee and members of the public.

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

(a) Initially: there are no costs anticipated with the implementation of this administrative regulation.

(b) On a continuing basis: None anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board's operation is funded by fees paid by licensees and appli-

cants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase fees either directly or indirectly. The fees associated with this administrative regulation are set forth in 201 KAR 40:025.

(9) TIERING: Is tiering applied? No, tiering was not used as all schools are required to notify the board of the relevant changes.

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 State Board for Proprietary Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340(7), 165A.360(2), (7), and (9),165A.370(1), (2), 165A.400.

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:

COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 5:100. Interstate Wildlife Violators Compact.

RELATES TO: KRS 150.236
STATUTORY AUTHORITY: KRS 150.025, 150.236, 150 238
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish regulations necessary to carry out the purpose of KRS Chapter 150. KRS 150.236 authorizes the department to promulgate regulations regarding the suspension of hunting or fishing privileges for persons whose hunting or fishing privileges have been suspended or revoked by other jurisdictions KRS 150.238 authorizes the department to enter into reciprocal agreements with other states regarding fish and wildlife violations. This administrative regulation establishes the provisions of a reciprocal Interstate Wildlife Violators Compact.

Section 1. Definitions. Unless the context requires otherwise, the definitions in this administrative regulation apply through this compact and are intended only for the implementation of this compact:

(1) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(4) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the party state which issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(9) "Licensing authority" means the department within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(12) "State" means any state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges or rights, including the privilege or right to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(15) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(17) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

Section 2. Procedures for the Issuing State. (1) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in (2) of this section, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(2) Personal recognizance is acceptable:

(a) If not prohibited by local law or the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources; and

(b) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources as policy as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance required by subdivision (3) of this administrative regulation, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources as policy

Section 3. Procedures for Home State. (1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges or rights until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual adopted by the KDFWR as policy.

Section 4. Reciprocal recognition of suspension. All party states shall recognize the suspension of license privileges or rights of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and would have been the basis for suspension of license privileges or rights in their state.

Section 5. The commissioner shall designate a KDFWR representative who shall serve as the department's compact administrator.

Section 6. Appeals. A person receiving a conviction under this regulation or who is found to have committed a violation in another state that warrants the department denying them a hunting license, fishing license, trapping license, or any wildlife permit, may appeal the decision and request in writing an administrative hearing within thirty (30) days of the denial.

(1) Upon receipt of a written request for an administrative hearing, the department shall set the date, time, and place of the hearing and shall forthwith notify the person by regular U.S. mail.

(2) An administrative hearing conducted pursuant to this section shall be held in accordance with KRS Chapter 13B.

Section 7. Effective Dates of Suspensions. Only violations that are committed on or after the effective date of entry, and resulting suspensions, shall be subject to the provisions of the compact.

MARK S. CRAMER, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: October 10, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007, at 9 a m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five (5) 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 November 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.

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 criteria for participating in the Interstate Wildlife Violators Compact in Kentucky. It will enable our Law Enforcement Division to quickly identify, through a national database, known fish and wildlife violators in Kentucky

(b) The necessity of this administrative regulation: This regulation is necessary for Kentucky to enter into the Interstate Wildlife Violators Compact. It augments the department's ability to protect and conserve fish and wildlife species for present and future residents of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to make administrative fish and game regulations, KRS 150.236 authorizes the department to prohibit an individual from purchasing or possessing a hunting or fishing license in Kentucky while their privilege to hunt or fish in another jurisdiction has been suspended or revoked; KRS 150.238 authorizes the department to enter into reciprocal agreements with one or more states relating to fish and wildlife laws, allows the department to promulgate a regulation adopting the provisions of the agreement, and authorizes the department to deny, suspend, revoke, or reinstate hunting, fishing, or trapping privileges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes This regulation will assist in the effective administration of the statutes by establishing criteria pertaining to the suspension and tracking of persons whose hunting or fishing privileges have been suspended or revoked in member states.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect residents and nonresidents who have had their hunting and fishing privileges suspended or revoked in member states or provinces due to wildlife violations. These individuals would not be allowed to hunt or fish in Kentucky for the period of their suspension There are approximately 100 residents currently suspended in Kentucky. The number of nonresidents attempting to hunt or fish in Kentucky who have been suspended in their home state is currently undetermined.

(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: Individuals must not have their hunting, fishing, or trapping licenses revoked in a member state or have a current outstanding violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will not result in any changes in cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost 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 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. 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 any fees directly or indirectly

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies equally to all persons who have had their hunting or fishing privileges revoked or suspended.

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, 150 236, and 150.238.

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 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 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:

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(New Administrative Regulation)

307 KAR 1:040. Application process for incentives for energy independence.

RELATES TO: KRS Chapter 11A, 61.878, 154.27-010 - 154.27-090.

STATUTORY AUTHORITY: KRS 154.27-030(4)(c), 154.20-033, 154.20-020

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.27-010 through 154 27-090 requires the Kentucky Economic Development Finance Authority to establish standards and requirements for the application process for incentives for energy independence and authorizes fees in conjunction with the application process. This administrative regulation clarifies the application process, identifies the information required for purposes of application, and clarifies the steps that shall be taken by the authority and the applicant between preliminary approval and final approval.

Section 1. Definitions. (1) "Affiliate" is defined by KRS 154.27-010(2).

(2) "Agreement" means a "tax incentive agreement" as defined by KRS 154.27-010(28).

(3) "Application" means the form Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program.

(4) "Authority" is defined by KRS 154.27-010(6).

(5) "Capital investment" is defined by KRS 154.27-010(9)

(6) "Project" means an "eligible project" as defined by KRS 154 27-010(15).

(7) "Retrofit" is defined by KRS 154.27-010(26).

(8) "Upgrade" is defined by KRS 154.27-010(30).

Section 2. Application. (1) An applicant for incentives pursuant to KRS Subchapter 154.27 shall submit an application to the authority at the applicable address stated in the application instructions.

(a) If the applicant is retrofitting or upgrading an existing business, the applicant must notify the appropriate regional office within the Department for Existing Business Development within the Cabinet for Economic Development. That office shall assign a project manager to assist the applicant in any matters concerning the Kentucky Cabinet for Economic Development.

(b) If the applicant is a new business locating in Kentucky, the applicant must notify the Department for New Business Development in the Cabinet for Economic Development. That office shall assign a project manager to assist the applicant in any matters concerning the Kentucky Cabinet for Economic Development.

(c) No application shall receive consideration without the signature of an agent of the cabinet from the appropriate office as identified in the application instructions.

(d) Applications must be received by the office identified in the application instructions as appropriate, prior to the last Friday of the month to be considered at the following month's meeting of the authority.

(2) In addition to the information required by KRS 154.27-030, the applicant shall provide as part of the application the following information:

(a) Identification of the applicant's affiliates as required by KRS 154.27-030 shall include the entity name, state of incorporation or organization, federal tax identification number or social security number for individual partners, agent for service of process, street address and telephone number, and if there are more than two (2) affiliates, shall include a diagram of the ownership structure of the affiliated companies;

(b)1. Identification of each anticipated source of eligible project funding as required by KRS 154.27-030 shall include the name of any agencies or institutions to which loan or grant applications have been submitted or are anticipated, the date of the loan or grant application submission or the anticipated date of submission,

the amount and type of funds requested or to be requested, the current status of each loan or grant application, date of closing, award or transfer of funds.

2. Copies of grant or loan applications, agreements or contracts related to funding shall be provided upon request of the authority;

(c) An itemized list of the capital investment, including specific estimated cost by line item, identification of items expected to qualify for sales tax exemption, and projected date of completion of the project;

(d) Identification of the proposed feedstock and, for each type of feedstock, either anticipated or confirmed sources;

(e) A business plan for the facility, including a full analysis of the product to be produced, market potential for the product identified and any long term contracts that are already in place for sale of the product, legal structure of the applicant and identification of the management team for the applicant and, if different, at the project site;

(f) A financial statement from the applicant for the most recent fiscal year end, and if the applicant is a newly formed entity, a financial statement from the entities or individuals forming the entity;

(g) A letter from the applicant stating that, if the project is a new location, the economic development project may reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the eligible company would likely locate outside the state or, if the project is a retrofit or upgrade, a statement that the tax incentives are necessary for the retrofit or upgrade to occur.

(h) A plan for employment of Kentucky residents during construction required by KRS 154.27-030, which shall include an explanation of methods to be employed and shall describe specific actions that shall be taken by the applicant to ensure that Kentucky residents shall have opportunities for employment;

(i) If requested by authority, a letter of support from the local government describing local economic development funding or incentive as well as giving general support for the proposed project; and

(j) An application fee in the amount of $1,000.

Section 3. Use and Costs of Consultant. (1) If the authority determines pursuant to KRS 154.27-030(5)(c) that there is a need to consult with an outside expert, after preliminary approval, the authority shall contract with an outside consultant with the expertise required to analyze the project.

(2) The consultant shall review the work to be completed and provide an estimate of the cost;

(3) The applicant shall pay to the authority the total estimated cost upon execution of the consultant payment agreement.

(4) The authority shall pay the consultant from the consultant funds paid by the applicant in accordance with the terms and conditions of the consultant payment agreement.

(5) Any balance of funds remaining after completion and delivery of the consultant's analysis to the authority shall be returned to the applicant.

Section 4. Memorandum of Agreement. If the authority grants preliminary approval of the application, it shall enter into a Memorandum of Agreement with the applicant which shall include:

(1) The maximum incentive amount preliminarily approved by the authority;

(2) The amount and the percentage of incentives to be provided under each available recovery method, if applicable;

(3) Conditions for final approval, including:

(a) Verification of representations made in the application and other documents submitted in association with the application;

(b) Payment for all professional services that may result from the application including legal fees and expenses of counsel to the authority pursuant to KRS 154 20-033;

(c) A date by which the applicant shall request the final approval from the authority;

(d) Verification of information necessary for calculation of advance payment incentive if requested by applicant; and

(e) Terms and standards for amendment of the Memorandum of Agreement.

Section 5. Information Sharing. (1) The authority may seek comments and recommendations from the Governor's Office of Energy Policy and the Center for Applied Energy Research with regard to the following:

(a) Whether the facility, as proposed, is eligible for incentives pursuant to KRS Subchapter 154.27;

(b) Whether the facility is carbon capture ready as defined by KRS 154.27-010(10), if applicable, including comments regarding appropriate equipment and floor plan required for compression and storage of carbon;

(c) Feasibility of the project, including the product, the market for the product, and the process employed;

(d) Applicable permits that shall be required and projection of eligibility of the facility; and

(e) Issues or questions relating to the application and applicant eligibility for incentives.

(2) Information provided to the authority in conjunction with the application may be shared with the Office of Energy Policy, the Department of Revenue, the Center for Applied Energy Research, and other appropriate experts or consultants, and those agencies, experts, or consultants shall maintain the confidentiality of the information provided to the extent that the information is exempt from disclosure under the Kentucky Open Records Act, KRS 61.878.

Section 6. Payment of Administrative Fees. (1) Upon final approval and execution of the agreement, the applicant shall remit to the authority an administrative fee equal to .25 percent of the incentives authorized in the tax incentive agreement, not to exceed $50,000. This administrative fee is exclusive of any expert consultant or legal fees which may be due.

(2) The applicant shall not be eligible for incentives until the administrative fee, any consultant payments or legal fees, and expenses are paid in full.

Section 7. Incorporation by Reference. (1) Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program, November, 2007 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following locations of the Cabinet for Economic Development, Monday through Friday, 8.00 a.m. to 4:30:

(a) Central Kentucky Office, 2300 Capital Plaza Tower, 500 Mero Street, Frankfort,
Kentucky 40601;

(b) East Kentucky Office, 530 South Lake Drive Prestonsburg, Kentucky 41653; or

(c) West Kentucky Office, 145 East Center Street, Suite 28, Madsonville, Kentucky 42431 if the applicant is an existing business considering a retrofit or upgrade; and

(d) Department for New Business Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601 if the applicant is a new business.

JEAN HALE, Chairman
JOHN E. HINDMAN, Secretary

APPROVED BY AGENCY: October 8, 2007

FILED WITH LRC: October 8, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall by held on November 27, 2007 at 2 p.m. in the Board of Directors' Conference Room on the First Floor of the Old Capitol Annex at 300 West Broadway in Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript it made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through Friday, November 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 noted below.

CONTACT PERSON: Hollie Spade, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides clarification of the application process and the applicable steps between preliminary and final approval of the incentives available in KRS 154.27-010 through 154 27-090 as required by KRS 154 27-030.

(b) The necessity of this administrative regulation: This regulation will provide guidance for those seeking energy project inducements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.27-030 directs the Kentucky Economic Development Finance Authority (the Authority) to promulgate a regulation for this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by statute and will streamline the application process.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Companies or other entities considering location of an eligible project (alternative fuel facility, gasification facility, renewable energy facility) in the Commonwealth will have clear instructions for applying for applicable inducements. The number of those is unknown at this time. This application process will also be helpful to local economic development agencies who may be working to attract these types of 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. This regulation sets forth the application and fee requirements and identifies supplemental information that will be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to present an eligible project for approval by the Authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an application fee of $1,000 and an administrative fee for projects that receive final approval that will vary based on the size of the project. The fee is.25% of the incentives awarded. Also, expert or consultant analysis of the proposed project may be necessary and costs of any outside consultant are to be paid by the applicant pursuant to Subchapter 154.27.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the applicant project is approved by the authority, the inducements will vary depending on investment in the Commonwealth, employment in the Commonwealth, and income generated in the Commonwealth, but the inducements awarded will likely be significant.

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

(a) Initially: The Cabinet will be increasing personnel to administer the new program generally. At this time the implementation alone requires significant personnel time, but no cash expense.

(b) On a continuing basis: There will be administrative cost related to processing of the application for inducements and monitoring of the projects after they are approved to confirm continuing eligibility under the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application and administrative fee will provide some financial support, but additional budget funding will be requested in future fiscal years for administration of the incentive 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: Yes. See explanation in (4)(b) above.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: Yes. Please see (4)(b).

(9) TIERING: Is tiering applied? Tiering is used to the extent that the amount of the administrative fee is related to the amount of incentives awarded to the applicant. The fee is a percentage of total incentive awarded, so that smaller projects will pay less than larger ones.

FISCAL NOTE ON STATE OF 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 department, or school districts) 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 154.27-030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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?

(b) How much revenue will this administrative regulation generate for the state of local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it 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:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(New Administrative Regulation)

502 KAR 13:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for range qualification for certification.

Section 1. Perform Live-firing Exercises. An applicant shall annually qualify for certification by performing a live-firing exercise in which the applicant is required to:

(1) Fire from a safe position;

(2) Perform without receiving any assistance in holding, aiming, or firing from the instructor or any other person; and

(3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 2. Supervision of Live-firing Exercise. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 3. Live-Firing Exercise Procedures and Grading. (1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 1(2) of this administrative regulation.

(2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.

(3) Prior to conducting range firing, the firearms instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

(4) A passing grade shall not be given on range work to an applicant who:

(a) Does not follow the orders of the firearms instructor;

(b) In the judgment of the firearms instructor, handles a firearm in a manner that poses a danger to the applicant or to others, or

(c) Fails to meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

(5) If the applicant successfully completes the live-firing exercise, the firearms instructor shall mail or hand deliver the completed "Peace Officer Range Qualification Certification - LEOSA," KSP Form Number 123, showing the applicant's successful completion of the live-firing exercise to the applicant within five business days.

Section 4. Incorporation by Reference. (1) "Peace Officer Range Qualification Certification-LEOSA," KSP 123, 07/05, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4.30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the range qualification requirements for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

(b) The necessity of this administrative regulation. KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions under which honorably retired elected or appointed peace officers qualify on the firing range for certification to carry a concealed deadly weapon pursuant to 18 U.S C. 926C.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Department of State Police and informs the public, training instructors and range officers of the requirements and conditions under which the range qualification for certification required by 18 U.S.C. 926C and KRS 237.140 may be obtained.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs, training instructors, range officers and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants, training instructors and range officers will be required to follow the standards articulated herein to determine whether an applicant meets the requirements for range qualification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the training instructors, range officers, sheriffs, or the Department of State Police. Pursuant to KRS 237.140, applicants may be charged a fee not in excess of $20 by the firearms instructor or the state or local agency. The applicant must provide his or her own ammunition.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for certification; and the range qualification process will be clarified for training instructors, range officers, sheriffs, and the Department of State Police.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the De-

partment of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138, 237.140, 237.142.

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 fee for range qualification is authorized by statute except that KRS 237.140 allows a firearms instructor to charge a fee of not more than $20 and a local or state law enforcement agency to charge its retirees a fee of not more than $20 each. No other revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No fee for range qualification is authorized by statute except that KRS 237.140 allows a firearms instructor to charge a fee of not more than $20 and a local or state law enforcement agency to charge its retirees a fee of not more than $20 each. No other revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years?

The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Revenues (+/-):

Expenses (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(New Administrative Regulation)

502 KAR 13:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the issuance, expiration, and renewal of a LEOSA license.

Section 1. Issuance of Certification. (1) The department shall issue a LEOSA license if it confirms that the applicant is qualified to carry a concealed deadly weapon pursuant to 18 U.S C. 926C after the department has received the documentation required by 502 KAR 13:010.

(2) If the department issues a LEOSA license, it shall:

(a) Transmit the license to the sheriff; and

(b) Send an issuance notice to the applicant, informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff.

(3) The sheriff shall issue the license to the applicant upon:

(a) Verification of the identity of the applicant by:

1. Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412; or

2. Personal knowledge of the sheriff; and

(b) Signature of the issuance notice by the applicant in the presence of the sheriff or the sheriff's designee.

Section 2. Expiration. A LEOSA license shall expire one year from the date of the range qualification listed on the "Peace Officer Range Qualification Certification-LEOSA," KSP 123, submitted with the application.

Section 3. Renewal. Not less than one hundred twenty (120) days prior to the expiration date of the license, the department shall mail to each licensee a "Notice of Expiration - LEOSA." Any licensee wishing to renew the license shall apply and be approved in the manner described in 502 KAR 13:010 and this administrative regulation for first time applicants except that a licensee may submit a copy of the Certification Of Law Enforcement Retirement-LEOSA (KSP 124) that was previously provided with his original LEOSA application.

Section 4. Identification. A LEOSA license issued by the department to a successful applicant shall consist of a photographic identification card containing the following:

(1) The front of the photographic identification card shall include the following information for the certified retired peace officer:

(a) Name;

(b) Address;

(c) Date of birth;

(d) Law enforcement agency retired from;

(e) Expiration date of certification;

(f) LEOSA certification identification card number; and

(g) Photograph.

(2) The back of the photographic identification card shall be substantially in the following form: The Commonwealth of Kentucky hereby certifies that the licensee identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C, and

has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the marksmanship qualification requirement established by the Commonwealth for peace officers.

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

(a) "Peace Officer Range Qualification Certification-LEOSA", KSP 123, 07/05;

(b) "Notice of Issuance", 1/9/07; and

(c) "Notice of Expiration - LEOSA", 6/21/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification & Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions for the issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Department of State Police and informs the public of the requirements and conditions for the issuance, expiration, and renewal of certification pursuant to 18 U.S.C. 926C and KRS 237.140.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of State Police and applicants will be required to follow the standards articulated herein concerning the issuance, expiration, and renewal of certifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the Department of State Police or county sheriffs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for certification or renewal; the expiration process will be clarified for sheriffs and the Department of State Police.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for application or renewal is authorized by statute. No revenue will be generated

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No fee for application or renewal is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Revenues (+/-):

Expenses (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(New Administrative Regulation)

502 KAR 13:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO. KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U S C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the replacement of LEOSA licenses that have been lost, destroyed, or stolen.

Section 1. Lost, destroyed, or stolen LEOSA license. (1) If a LEOSA license is lost, destroyed, or stolen, a licensee shall notify the department on a "Request For Duplicate LEOSA License," KSP 127.

(2) A licensee shall complete the "Request For Duplicate LEOSA License," KSP 127, in the presence of the sheriff.

(3) The completed "Request For Duplicate LEOSA License," KSP 127, shall be:

(a) Signed by the licensee in the presence of the sheriff, and

(b) Notarized.

(4) The completed "Request For Duplicate LEOSA License," KSP 127 shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department in the manner set forth in 502 KAR 11 010, Section 10.

(5) If the department approves the request for a duplicate license, the department shall.

(a) Issue a duplicate license that contains a license number that differs from the license number on the lost, destroyed, or stolen license;

(b) Send the duplicate license to the sheriff;

(c) Notify the licensee in writing that the duplicate license may be obtained by the licensee:

1. At the office of the sheriff; and

2. After verification of identity of the licensee as provided by 502 KAR 13.010, Section 4.

(6) If the department denies the request for a duplicate license, it shall notify the licensee in writing.

Section 2. Incorporation by Reference. (1) "Request For Duplicate LEOSA License," KSP 127, 06/12/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard 502/564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding replacement of a LEOSA license that has been lost, stolen, or destroyed.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions for the replacement of a LEOSA license that has been lost, stolen, or destroyed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Department of State Police and informs the public of the requirements and conditions for the replacement of a LEOSA license that has been lost, stolen, or destroyed.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who possess 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs, and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of State Police and licensees will be required to follow the standards articulated herein concerning the replacement of a LEOSA license that has been lost, stolen, or destroyed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the Department of State Police or county sheriffs Also, there is no fee for a licensee to request a replacement license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for replacement of a LEOSA license that has been lost, stolen, or destroyed; the replacement process will be clarified for sheriffs and the Department of State Police.

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

(a) Initially. The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a)

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for replacement is authorized by statute. No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No fee for replacement is authorized by statute No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(New Administrative Regulation)

502 KAR 13:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for elected or appointed peace officers who are honorably retired.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions This administrative regulation establishes the requirements and procedures for the change of personal information regarding LEOSA licensees.

Section 1. Change of Personal Information. (1) If the address or personal information of a licensee has changed, the licensee shall notify the department within thirty (30) days of the change of personal information on the "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120.

(2) The "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120, shall be:

(a) Completed and signed by the licensee in the presence of the sheriff; and

(b) Executed under oath.

(3) The sheriff shall verify the change of personal information as provided by 502 KAR 13:010, Section 4.

(4) The completed "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120, shall be

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11.010, Section 10.

Section 2. Incorporation by Reference. (1) "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120, 08/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10 a m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent

to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard 502/564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a licensee to inform the department of a change of address or other personal information.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the provisions regarding the procedure for a licensee to inform the department of a change of address or other personal information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Department of State Police and informs the public of the requirements and conditions for a licensee to inform the department of a change of address or other personal information.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who possess 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs, and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of State Police and licensees will be required to follow the standards articulated herein to update the address and personal information of licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the Department of State Police or county sheriffs. Also, there is no fee for licensees to update personal information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to update their address and personal information with the department.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a)

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; 237.140; 237.142.

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 fee for updating personal information is authorized by statute. No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No fee for updating personal information is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(New Administrative Regulation)

502 KAR 13:070. Applicant photograph requirements for certification to carry concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18

U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes applicant photograph requirements for LEOSA certification.

Section 1. The photograph of an applicant for a LEOSA certification shall:

(1) Be a color photograph;

(2) Be no less than three and one-half (3 1/2) inches by four (4) inches;

(3) Not exceed four (4) inches by five (5) inches;

(4) Display the full front of the head and the facial features of the applicant;

(5) Not be a photograph of the applicant wearing sunglasses or attire that obscures a feature of the applicant's face;

(6) Be an original photograph or a photographic copy developed from the negative of an original photograph; and

(7) Not be an image produced by a digital camera, computer, or a copier or other copy equipment or copy machine.

Section 2. The department shall:

(1) Consider an application incomplete if an applicant submits a photograph that it determines does not comply with the requirements of Section 1 of this administrative regulation; and

(2) Notify the sheriff who transmitted the application form and the applicant pursuant to the provisions of this administrative regulation.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON. Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard (502) 564-8215

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes requirements for the photographs that must be submitted with applications for a license to carry a concealed deadly weapon pursuant to KRS 237.138 to 142.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the provisions regarding the requirements for photographs that must be submitted with applications for a license to carry a concealed deadly weapon pursuant to KRS 237.138 to 142.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation gives guidance to the Department of State Police and the Sheriffs of the Commonwealth of Kentucky in regard to the photographs that must be submitted with applications to obtain a license to carry a concealed deadly weapon pursuant to KRS 237.138 to 142 and 18 U.S.C. 926C.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who apply for 18 U.S.C. 926C and KRS 237.138 to 142 certification to carry a concealed deadly weapon, all county sheriffs, and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to follow the standards articulated herein in regard to photographs to be attached to an application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the Department of State Police or county sheriffs. Also, there is no photograph or application fee for certification applicants. The only cost to an applicant would be the minimal cost of the picture itself.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for certification.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; 237.140; 237.142.

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 fee for applications or photographs is authorized by statute. No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No fee for applications or photographs is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(New Administrative Regulation)

502 KAR 13:080. Incomplete application for certification to carry concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for elected or appointed peace officers who are honorably retired.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the reasons an application form shall be deemed incomplete and the required procedures for the department.

Section 1. An application form shall not be considered complete if:

(1) It does not meet the requirements of 502 KAR 13 010,

(2) It contains erroneous information; or

(3) An item of the application form cannot be read or understood.

Section 2. If the department determines that an application form is incomplete pursuant to the Section 1 of this administrative regulation, the department shall notify the applicant on a "Missing Information/Document" of the:

(1) Reason the application form has been determined to be incomplete; and

(2) The action required to complete the application form.

Section 3. Incorporation by Reference. (1) "Missing Information/Document," 01/09/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4.30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2007 at 10:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business November 30, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reasons that applications for certification to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C shall be deemed incomplete and the procedures required of the Department of State Police.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also requires the Department of State Police to promulgate administrative regulations to implement the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures to be followed by the Department of State Police in regard to incomplete applications to obtain certification to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reasons an application shall be deemed incomplete and the action to be taken by the Department of State Police.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who apply for 18 U.S.C. 926C and KRS

237.138 to 142 certification to carry a concealed deadly weapon, all county sheriffs, and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It requires the State Police to determine that an application is incomplete if it does not meet the requirements of this regulation and requires the department to notify the applicant and the sheriff on a Missing Information Notice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the Department of State Police or county sheriffs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for certification.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for applications is authorized by statute. No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No fee for applications is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(New Administrative Regulation)

503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.380(1)(c), KRS 15 3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Commissioner of the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. This administrative regulation prescribes conduct requirements of trainees attending the Certified Court Security Officers academy conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms Required. (1) A trainee shall acquire and wear a brown utility uniform while participating in the academy. (2) A uniform shall be:

(a) Clean, pressed, and in good condition;

(b) Appropriately sized to fit the trainee and not excessively loose, baggy, or tight;

(c) Worn over a clean white or department-issued tee-shirt, visible at the neck; and

(d) Worn with a wide black police-type belt, clean police-type footwear, brown or black socks, and when outdoors, a department cap.

(3) Jewelry.

(a) The trainee may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

(b) Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator. Penalty: verbal warning or written reprimand.

(4) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(5) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(6) Optional clothing may be worn during a training activity if authorized by the class coordinator or an instructor.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee . If the Department discovers that a trainee does not meet the Certified Court Security Officer qualifications in KRS 15.3971, he shall.

(a) Be removed from the academy by the:

1. Director;

2. Branch manager; or

3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy he may request an administrative hearing, conducted in accordance with the requirements of KRS Chapter 13B, within thirty (30) days of the removal. The request for an administrative hearing shall be in writing.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for com-

pleted portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except where required by law, a trainee's training file shall not be available for access except by:

1. The department;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member.

(b) Refrain from:

1. Engaging in sexual activity on Department property;
2. Physical contact with another person that is inappropriate in a professional training setting (For example, hugging and/or kissing);
3. Vulgarity;
4. Sexual harassment;
5. Rudeness;
6. Confrontation;
7. Other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;
2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed, and
3. Shall not wear a beard unless he receives permission from the department, based upon:

a A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair shall:

1. Not be unkempt; and
2. Be kept above the collar.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) Regardless of amount, a trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the trainee is granted permission to stay beyond the normal Friday evening checkout.

(b) "Attending a basic training course" shall not include the weekend period during which trainees check out of the dormitory and return to their homes.

(c) A trainee shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances.

(d) A trainee shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense

(e) Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the trainee has violated the provisions of this section.

(f) Testing may be randomly requested of all members of an academy class or all dormitory residents. If a test is requested, a trainee shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01% or greater.

(g) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician.

(h) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) Due to the accidents that have occurred in the training setting in other jurisdictions, a trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms

instructor.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department.

(b) A trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the academy.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531 010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive.

(8) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee is absent for a combined period of more than ten (10) percent of the academy, he or she may be required to return to a later class in order to complete all coursework.

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities.

(b) A trainee shall not use tobacco products during, or bring food or drink into a academy activity unless so permitted by the training director or commissioner.

(c) A trainee shall not engage in conduct which creates or may create a risk of injury to others during a training session.

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another.

(13) Residence hall.

(a) During the academy, when attending in Madison County, a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection.

(e) Doors shall be locked whenever a room is unoccupied.

(f) A hot plate shall not be used in the residence hall.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department.
2. Have a visitor in his room after 9 p.m.
3. Keep pets, animals, or birds of any kind in his room.
4. Engage in dangerous, disruptive, immoral or obscene behavior.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Certified Court Security Officers Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature of confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence. We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement.

(2) The class shall elect an honor code representative during the first week of the academy.

(3) All trainees shall report honor code violations to the honor code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the certified court security officers academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the sheriff of the trainee's agency:

(1) A trainee performance report which shall be completed at the end of the first week and shall include trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle parked at a:

1. Bar;
2. Tavern;
3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members shall have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by
Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal from the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed, or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing, notice of which shall be provided in writing to the trainee.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

JOHN W. BIZZACK, Commissioner

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2007 at 9 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 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. 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 November 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, telephone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Certified Court Security Officer training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for court security officer trainees and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.3975 requires that all court security officers complete training established by the Kentucky Law Enforcement Council. This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the certified court security officer training academy conducted by the Department of Criminal Justice Training.

(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: Not applicable.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect every one of the 120 county sheriffs' offices that choose to hire persons for the position of Certified Court Security Officer. Currently, there are approximately 600 court security officers employed in this Commonwealth who are required by statute to complete the training academy.

(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 agencies should not have to take any actions. This administrative regulation relates only to rules for the trainees that attend the training academy. Similar conduct requirements are already in place for those who attend law enforcement basic training and the telecommunications academies at the Department of Criminal Justice Training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Compliance should not cost anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sheriffs' offices will receive well-trained court security officers who are able to conduct themselves as professionals and comply with reasonable conduct requirements when they are out of eyesight of their employers.

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

(a) Initially: There should not be any costs to implement this administrative regulation.

(b) On a continuing basis: For those who violate the rules, there may be costs related to providing a due process administrative hearing. Such a hearing would be conducted by the contact person, who serves as an Assistant General Counsel to the Office of Legal Services of the Justice and Public Safety Cabinet. Hearing Officers employed by the Office of the Attorney General would be necessary to hear the case, at a normal cost of $75 per hour, which is paid by the Department of Criminal Justice Training.

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

(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 should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any 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 county sheriffs' offices whose court security officers must be a certified. Court security officers are required to attend a two week training academy and must abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1) and (5).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment should not have any effect on the expenditures or 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? Hopefully, none. However, if an administrative hearing became necessary, a hearing officer from the Office of the Attorney General would be employed at a cost of $75.00 per hour.

(d) How much will it cost to administer this program for subsequent years? The same as in the first year.

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

Revenues (+/-): None

Expenditures (+/-): It is very infrequent, but on occasion, the Department is required to take action to punish violations of the disciplinary code, which includes incidents such as cheating, drinking alcohol, or sexual harassment toward another trainee. In some cases, the recommended punishment of the Commissioner necessitates an administrative hearing for the trainee. Those hearings are prosecuted by the agency legal counsel, who is also the contact person in this administrative regulation. Hearing officers from the Office of the Attorney General are also necessary to hear the

case. The costs for their services vary based upon the specific incident. Please refer to answer to 4(c) above.

Other Explanation: None

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

701 KAR 5:130. Drug testing of teachers involved in illegal use of controlled substances.

RELATES TO: KRS 160 380, 161.175, 161.790

STATUTORY AUTHORITY: KRS 156.070, 161.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.175 requires the Kentucky Board of Education to promulgate an administrative regulation relating to drug testing as a condition of retaining employment for certified employees determined to have engaged in misconduct involving the illegal use of controlled substances. This administrative regulation establishes criteria and procedures for drug testing of a teacher disciplined and determined to have engaged in misconduct involving the illegal use of controlled substances.

Section 1. Definitions. (1) "Controlled substance" means a substance defined and regulated by KRS Chapter 218A.

(2) "Has been determined in an administrative or judicial proceeding" means discipline for teacher misconduct involving the illegal use of controlled substances for which there was a right to request a hearing under KRS 161.790; and

(a) For which the teacher did not timely submit notice of intention to answer the charges;

(b) Which was the subject of a notice of intention to answer the charges which the teacher withdrew; or

(c) Which is affirmed or left undisturbed in whole or in part as a result of a final administrative or judicial order, opinion, or judgment.

Section 2. Conditions of Drug Testing. (1) A teacher who has been determined through an administrative or judicial proceeding to have engaged in conduct involving the illegal use of controlled substances shall be subject to random and periodic drug testing at least three (3) times within a period not to exceed twelve (12) months from the date of the determination. A superintendent shall have the discretion to determine the length of the drug testing period within the maximum time permitted, except two (2) of the tests shall be within two (2) weeks of each other.

(2) Testing policies or practices shall provide for:

(a) Reliability of test results;

(b) Employee privacy during taking of samples;

(c) Security of samples; and

(d) Protection of confidentiality throughout the testing process and in handling of results.

(3) This administrative regulation shall not preclude or supplant other lawful employee drug testing policies or procedures.

(4) A teacher subject to drug testing under this administrative regulation shall be provided with a copy of board of education policies issued under this administrative regulation and shall be notified the teacher is subject to drug testing as a condition of continued employment.

(5) A teacher subject to drug testing who refuses to complete any part of the drug testing process shall be subject to disciplinary action under KRS 161.175 and 161.790.

(6) A positive result may be grounds for immediate reassignment of duties or disciplinary action including termination under KRS 161.175 and 161.790.

(7) Results of drug testing shall be:

(a) Confidential;

(b) Separate from the personnel file; and

(c) Subject to release to third parties only

1. Upon written consent of the individual;

2. Upon lawfully issued administrative or court order or compulsory process (such as subpoena);

3. As needed to address work-related health or safety risks; or

4. To be used in administrative or court action.

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

KEVIN NOLAND, Interim Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: October 9, 2007

FILED WITH LRC: October 9, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 27, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions under which a certified employee who has engaged in misconduct involving the illegal use of controlled substances may, depending on the circumstances, retain employment by agreeing to drug testing as a condition of employment.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 161.175.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for conditions under which teachers shall agree to drug testing to remain eligible for employment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of drug testing of a teacher found to have engaged in misconduct involving the illegal use of controlled substances per KRS 161.175.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A. This is a new Kentucky Administrative Regulation.

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

(b) The necessity of the amendment to this administrative regulation

(c) How the amendment conforms to the content of the authorizing statute

(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: School districts and any certified School district employee who has engaged in misconduct involving the illegal use of controlled substances.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact at the local school district level how certified personnel who engage in misconduct involving illegal substances may remain eligible, under certain circumstances, for employment through agreement to periodic drug testing.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each school district will adopt a policy and procedure on drug testing of teachers found to have engaged in misconduct involving the illegal use of controlled substances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None; the cost will be assumed by the teacher who undergoes drug testing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky children will be better protected from teachers identified as having a possible substance abuse problem.

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

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A teacher requiring drug testing will be responsible for the cost.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The payment of costs by a teacher who requires drug testing will cover the cost necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

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? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.175, Teachers involved in illegal use of controlled substances.

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

(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? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Kentucky Horse Racing Authority
(New Administrative Regulation)

810 KAR 1:090. Kentucky Thoroughbred Development Fund.

RELATES TO. KRS 230.225(7)(b), 230.400, 138.510

STATUTORY AUTHORITY: KRS 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230 400 establishes the Kentucky Thoroughbred Development Fund. KRS 230.400(7) authorizes the Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from this fund. This administrative regulation establishes standards for eligibility and the administration of payments from this fund.

Section 1. Definitions. (1) "Allowance race" means an overnight thoroughbred race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins. "Allowance race" shall include allowance optional claiming races if the horse is entered under allowance conditions and not eligible to be claimed, but shall exclude starter allowance races.

(2) "Association" means an entity licensed to conduct live thoroughbred racing in the Commonwealth of Kentucky.

(3) "Handicap race" means a thoroughbred race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(4) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.

(5) "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky.

(6) "KHRA" means the Kentucky Horse Racing Authority.

(7) "KTDF" means the Kentucky Thoroughbred Development Fund.

(8) "KTDF Advisory Committee" means the committee established by KRS 230 400(2) to advise and assist the KHRA in the development of a supplemental purse program pursuant to KRS 230.400(3)(a).

(9) "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.

(10) "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.

(11) "Nonclaiming maiden race" means a thoroughbred race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners is eligible to be claimed.

(12) "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.

(13) "Stakes race" means a race in which nomination, entry and/or starter fees contribute to the purse.

Section 2. KTDF Monies Earned. (1) One Live Thoroughbred Association.

(a) Live racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138 510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2) and (3).

(2) More than one (1) live ;thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as follows:

(a) The association conducting the live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The Intra-state wagering monies shall be allocated to that Kentucky thoroughbred track on which the wagering is placed for purposes of calculating that track's KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that track's KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

Section 3. KTDF Reconciliation. (1) Each association shall file with the KHRA a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the KHRA the actual KTDF purse distribution no later than fifteen (15) calendar days after the last day of a live race meeting.

(3) KHRA shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet which has not been distributed in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the approval of the KTDF Advisory Committee and KHRA:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) Reasonable and customary administrative charges for time spent reconciling the KTDF account shall be charged to each association by the KHRA based on the percentage of funds generated by each association for the previous calendar year.

(6) An association, at its option, may pay advertising charges billed to the association by the KTOB from the association's KTDF available balance.

(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the KHRA whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

WILLIAM STREET, Chairman
LAVOYED HUDGINS, Deputy Commissioner
For TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 15, 2007
FILED WITH LRC: October 15, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27th, 2007, at 10 am, at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by November 16th, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30th, 2007. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON. John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the procedures for ensuring the proper distribution of monies from the Kentucky Thoroughbred Development Fund (KTDF), which is set forth in KRS 230.400.

(b) The necessity of this administrative regulation: KRS 230.400 authorizes the Authority to promulgate regulations to implement the details of the KTDF. Although KRS 230.400 was enacted into law in 1978, prior to the creation of the Kentucky Horse Racing Authority no regulations had ever been promulgated. After an audit initiated by the Authority revealed certain financial imbalances in the fund, the Authority formed a working group of racing and horsemens' associations to draft a regulation governing the fund. This regulation creates a sound set of procedures to ensure that disputes and financial discrepancies do not occur in the future.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230 400, which creates the KTDF, explicitly authorizes the Authority to promulgate regulations to carry out the provisions and purposes of the statute. This regulation assists in carrying out the intent of the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation amplifies the provisions of the statute by specifying the manner in which KTDF distributions are to be reconciled, establishing the percentage amounts of live and nonlive racing handle which are to be placed into the KTDF fund, and specifying the procedures to be used in dividing monies earned on the (rare) days on which more than one live racing meeting is being conducted in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The primary organizations affected by this regulation are the thoroughbred racing associations in Kentucky: Churchill Downs, Keeneland Race Course, Ellis Park, Turfway Park, and Kentucky Downs. The Kentucky horsemens' assocations (including the Horsemen's Protective and Benevolent Association, and the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders) will also be affected, because their members (horse owners running horses in Kentucky) receive the KTDF funds in the form of enhanced purses.

(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 race tracks will use the procedures outlined in the regulation to assist in tracking and reconciling KTDF account balances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any compliance costs will be minimal, and will consist at most of the associations reimbursing the Authority for the approximately two hours per week that an administrative assistant at the Authority spends on KTDF matters. The Authority and the associations have agreed that the Authority will track this cost for a year and then the Authority will determine whether to assess this costs against the associations. The associations have agreed to accept the cost if it is deemed necessary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The KTDF fund will have a regulation in place that will provide more guidance than exists at present as to how KTDF monies are to be accrued and reconciled. This will assist in preventing inequities and disputes about the how the fund is administered in the future.

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

(a) Initially: No additional cost. The administrative regulation merely establishes clearer procedures governing certain aspects of the fund.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are required by this administrative regulation.

(9) TIERING. Is tiering applied? Tiering is not applied to this administrative regulation because the regulation simply governs the procedures to be used by the five thoroughbred racing associations in Kentucky. Each association is treated equally under the 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 Horse Racing Authority will be impacted by this administrative regulation, in that it administers the rules of horse racing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. No federal statutes or regulations are involved.

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: The only possible cost is a minimal amount of staff time necessary to administer some of the new procedures set forth in the regulation. As explained in (4)(b) of the regulatory impact analysis and tiering statement above, this cost may or may not be assessed to the associations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(New Administrative Regulation)

815 KAR 20:032. Continuing education requirements for licensed plumbers.

RELATES TO: KRS 318.054

STATUTORY AUTHORITY: KRS 318 054

NECESSITY, FUNCTION, AND CONFORMITY: The office is directed by KRS 318.130 to adopt and put into effect a State Plumbing Code. KRS 318 054 authorizes the office, after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes those requirements.

Section 1. Master Plumbers. (1) Each master plumber shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be received within twelve (12) months prior to renewal.

(2) Continuing education courses shall relate to one (1) or more of the following:

(a) Business;

(b) Job safety;

(c) The Kentucky state plumbing code; or

(d) Items directly related to the plumbing trade.

Section 2. Journeyman Plumbers. (1) Each journeyman plumber shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be received within twelve (12) months prior to renewal.

(2) Continuing education courses shall consist of:

(a) The Kentucky state plumbing code;

(b) Job safety - a minimum of two (2) hours; or

(c) Items directly related to the plumbing trade.

Section 3. Combined Master and Journeyman Licenses. An individual which is a holder of both a master and a journeyman license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Master Licenses. An inactive master plumber is not required to complete continuing education unless the inactive licensed plumber wishes to activate his or her license to the status of an active master plumber in which case he or she shall meet the requirements of Section 1 of this administrative regulation.

Section 5. Delinquent Licenses. Prior to reinstatement, an individual whose master or journeyman license is delinquent shall complete the total number of continuing education hours per year that the license has been delinquent. However, the number of hours necessary for reinstatement shall not exceed forty (40) hours.

Section 6. Continuing Education Courses. (1) All continuing education shall be completed in one or more courses approved by the office and the Kentucky state plumbing code committee for master and journeyman plumbers pursuant to 815 KAR 20:034.

(2) Continuing education courses shall be offered only by providers approved by the Office and the Kentucky state plumbing code committee pursuant to 815 KAR 20:034.

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 15, 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 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 November 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 continuing education requirements for plumbers.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to ensure plumbers are current on code requirements and safety information.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute authorizes continuing education for plumbers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist by ensuring that licensed plumbers are provided information on code requirements and safety.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed plumbers will be affected by the continuing education requirements.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The license plumbers will be impacted by having to obtain the required continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in questions (3): The cost will depend on the fees charged by providers and it is hoped that several low-cost providers will be available.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed plumbers will benefit by obtaining new information on code changes and safety issues.

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

(a) Initially: Implementation will result in minor increased cost to monitor compliance. Existing staff should be sufficient.

(b) On a continuing basis: Implementation will result in minor increased cost to monitor compliance. Existing staff should be sufficient.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is expected. However, some providers of continuing education may charge a fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly imposed. The only cost to plumbers would be if the providers charge a fee.

(9) TIERING: Is tiering applied? Tiering was not used to determine the number of hours required. However, the continuing education courses for master plumbers include business and is, therefore, differentiated from journeyman. The differentiation is because master plumbers are business owners.

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 plumbing division will administer the continuing education program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 318.054.

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? Minimal cost, if any. It is believed existing staff can monitor compliance.

(d) How much will it cost to administer this program for subsequent years? Minimal cost, if any. It is believed existing staff can monitor compliance.

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
(New Administrative Regulation)

815 KAR 20:034. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.134

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.054 authorizes the office, after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation established the process by which providers of continuing education courses are registered

with the office and their courses approved.

Section 1. Provider Registration. (1) The office shall maintain a list of approved continuing education course providers. An approved provider shall meet the criteria set forth in Section 2 of this administrative regulation.

(2) Each continuing education course provider shall register with the office before submitting course materials for approval by the office. Registration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form PLB-3 provided by the Office and shall include the following:

(a) The name, mailing address, email address, telephone, and fax numbers of the provider;

(b) The names and addresses of any persons who have received or will receive any portion of revenues generated from the course; and

(c) Disclose the fee, if any, to be charged to participants.

(4) The course provider shall report to the Office any change to the information submitted in the initial registration within thirty (30) days after such change takes effect.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the office on Form PLB-4 provided by the office for each course offered by a course provider.

(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the office.

(3) A continuing education course shall provide instruction in at least one of the subject areas specified in Section 3 of this administrative regulation.

(4) The course application shall include the following:

(a) A course syllabus;

(b) Name of the course;

(c) Name and registration number of the provider;

(d) Name of the instructor or presenter along with his or her qualifications;

(e) The amount of actual time needed to present the course; and

(f) The objectives of the course.

(5) Content changes made to the course shall require resubmission to the office.

(6) Course approval shall be valid for two (2) years from date approved by the office.

(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements for the course.

(8) Providers shall submit to the office dates and locations of courses ninety (90) days in advance, and the office shall be notified at least thirty (30) days prior of changes made to scheduled courses.

(9) Providers shall provide courses in each of the congressional districts;

(10) Courses shall be offered at a minimum of one (1) time within each quarter of the year;

(11) Cancellations.

(a) Notification of cancellations shall be made no less than five (5) working days prior to the scheduled class;

(b) In the event of cancellation, providers shall, at the option of the registrant, issue a full refund or reschedule the course;

(c) A registrant who notifies a provider of cancellation within five (5) working days of a scheduled course shall be allowed the choice of a full refund or to attend a subsequent course; and

(d) Providers shall not be permitted to cancel a course with ten (10) or more registrants.

Section 3. Continuing Education Course Content. (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.

(2) Courses relating to business shall include one or more of the following:

(a) Business law;

(b) Accounting practices; or

(c) Insurance.

(3) Courses relating to job safety shall directly relate to the construction trade.

(4) Courses related to the Kentucky state plumbing code shall include one or more of the following:

(a) KRS Chapter 318;

(b) Basic principles;

(c) 815 KAR 20.001 through 815 KAR 20:195;

(d) Kentucky Building Code; or

(e) Kentucky Residential Code.

(5) Providers requesting approval of courses for topics not listed in this section shall demonstrate the relevancy of the topic to the plumbing trade.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain the following records for each course for three (3) years following the date of the course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in/sign-out sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall complete a certificate of completion for each participant enrolled and completing an approved continuing education course.

(b) Certificates of completion shall contain relevant participant information and shall at a minimum include the following information about the participant:

1. Name;
2. Address;
3. License number;
4. Date of attendance; and
5. Courses completed.

(c) One (1) copy of each certificate of completion shall be:

1. Sent to the office electronically;
2. Retained on file by the provider; and
3. Given to the participant upon completion of the course.

Section 5 Course Audits. (1) Records of the provider shall be provided to the office within ten (10) days upon written request.

(2) Representatives of the office may, at any time, attend a course to ensure that the course is meeting its stated objectives and that applicable requirements are being followed.

Section 6. Disciplinary Action. The office may deny, suspend or revoke approval of any course provider or may issue a fine to any course provider who:

(1) Obtains or attempts to obtain registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to such information;

(3) Advertises a course as being approved by the office before such approval is received; or

(4) Fails to comply with the requirements of this administrative regulation.

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

(a) Form PLB-3, "Application for Approval as a Continuing Education Course Provider for Plumbing Licensure", October, 2007; and

(b) Form PLB-4, "Application for Continuing Education Course for Plumbing Licensure", October, 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Division of Plumbing, 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: October 10, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2007, at 9 a.m. , 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 November 15, 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 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 November 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 requirements of providers of continuing education courses for plumbers.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to ensure that courses are related to the plumbing trade and that the providers are qualified.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute authorizes continuing education for plumbers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By ensuring requirements for providers, plumbers should receive better continuing education instruction.

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

(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: KRS 318.130 allows for periodic amendment of the Kentucky State Plumbing Code.

(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: Any organizations desiring to provide continuing education to 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:

(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: Such groups will be impacted by having to register and by having their courses approved.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in questions (3): None. No fees are charged for registration or course approval.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The providers will benefit by having standard approval criteria and responsibilities clearly established.

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

(a) Initially: Minimal cost to register providers and approve courses. It is believed existing staff will process and monitor compliance.

(b) On a continuing basis: It is believed existing staff will process and monitor compliance.

(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 increased fees or funding is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are imposed

(9) TIERING: Is tiering applied? Tiering was not applied because it is believed that all providers and courses should meet certain criteria.

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 plumbing division will administer the continuing education program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 318.054

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? There will be an increase in staff time to administer the program. It is believed existing staff is sufficient.

(d) How much will it cost to administer this program for subsequent years? Increase in staff time to administer. It is believed existing staff is sufficient.

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 Fire Prevention
(Repealer)

815 KAR 35:051. Repeal of 815 KAR 35:050.

RELATES TO: KRS 227A.010, 227A.060, 227A.080, 227A.100
STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)
NECESSITY, FUNCTION, AND CONFORMITY: 815 KAR 35.050 is being repealed because the statute authorizing obtaining a license under its grandfathering provisions is no longer in effect.

Section 1. 815 KAR 35:050, Licensing of electrical contractors, electricians, and master electricians, is hereby repealed.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 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 November 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 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 November 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: The regulation which contained the mechanism to apply for a license under the grandfathering provisions of the statute is being repealed because the statute authorizing such licensing is no longer effective.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to reflect that licensing under the grandfathering provisions is no longer possible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms by reflecting that the grandfathering provisions are no longer in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist the administration of the statutes by eliminating confusion over the ability to qualify for a license under the grandfathering provisions.

(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 repeals the provisions relating to obtaining a license through the grandfather provisions of the statute.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary because the statute is no longer effective.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the statute by reflecting that the statute is no longer in effect.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will reduce any confusion over the ability to be licensed under grandfathering provision that are no longer effective.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals who failed to use the grandfathering provisions when available.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new actions are required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds are necessary to implement.

(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 established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? Not applicable. The amendment merely repeals a regulation whose statutory basis is no longer in effect.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)

900 KAR 7:020. Kentucky e-Health Corporation.

RELATES TO: KRS 216.261, 216.263, 216.265, 216 267
STATUTORY AUTHORITY: KRS 216 267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.267 allows the e-Health board to establish a public or nonprofit e-Health Corporation to facilitate public-private collaboration in the implementation and development of the Kentucky health network. This administrative regulation establishes membership, terms, organization, and duties for the Kentucky e-Health Corporation.

Section 1. Organization. (1) The Kentucky e-Health Corporation (corporation) is created as a nonprofit organization and is attached to the Kentucky e-Health Network Board for oversight and governance purposes.

(2) State funding shall come through the Kentucky e-Health Network Board and the Cabinet for Health and Family Services to the nonprofit Kentucky e-Health Corporation.

(3) The Kentucky e-Health Corporation may receive:

(a) Public funding;

(b) Private funding;

(c) Charitable gifts;

(d) Federal grants and contracts; and

(e) Foundation grants.

(4) All existing duties, responsibilities, functions, personnel, programs, funds, obligations, records, and real and personal property of the Kentucky e-Health Corporation shall be under the authority and control of the Kentucky e-Health Network Board and the Cabinet for Health and Family Services should the Kentucky e-Health Corporation dissolve.

Section 2. Board of Directors Membership. (1) The Kentucky e-Health Network Board shall appoint the e-Health Corporation Board of Directors from a list of candidates forwarded by stakeholders.

(2) The corporation's Board of Directors shall consist of fourteen (14) voting members from public and private sectors including:

(a) Kentucky e-Health Network Board cochair, or a designee, from the University of Kentucky, who initially shall serve as cochair of the corporation;

(b) Kentucky e-Health Network Board co-chair, or a designee, from the University of Louisville, who initially shall serve as cochair of the corporation;

(c) One (1) member from the Kentucky Health Information Partnership Advisory Subcommittee;

(d) One (1) members from the Cabinet for Health and Family Services representing the Department for Medicaid Services,

(e) One (1) member from the Cabinet for Health and Family

Services representing the Department for Public Health;

(f) Two (2) members representing physicians or other health care practitioners in active practice in the Commonwealth;

(g) Two (2) members representing payors of health care;

(h) One (1) member representing employers who purchase health care benefits for employees;

(i) Two (2) members representing hospitals or other health care facilities;

(j) One (1) member representing consumers of health care; and

(k) One (1) member representing local or regional health information exchange organizations providing services to residents of the Commonwealth.

(3) The appointed members of the e-Health Corporation Board of Directors shall hold their offices for a term of two (2) years and may be reappointed to one (1) additional term.

(4) Vacancies, when they occur during a term of office, shall be filled for the unexpired term in the manner prescribed for original appointment.

(5) If any member misses more than two (2) consecutive meetings of the board, then that position shall be declared vacant and filled in accordance with this section.

Section 3. Board Chairperson. (1) Cochairs of the Kentucky e-Health Network shall serve as corporation board chairs for one (1) year, with a new chair elected by the Kentucky e-Health Corporation Board of Directors for a term of one (1) year. A chairperson may be re-elected to a second consecutive term.

(2) The board chair shall.

(a) Oversee preparation of all minutes, records, and orders of the Kentucky e-Health Corporation;

(b) Be responsible for the preservation of all documents; and

(c) Preside over meetings of the board.

Section 4. Quorum. (1) Eight (8) members of the board shall constitute a quorum

(2) A quorum shall be present in order for the board to take action, other than adjourn.

Section 5. Voting. (1) Decisions of the e-Health Corporation shall be made by majority vote of the members of its Board of Directors, except where sixty (60) percent approval is needed.

(2) A sixty (60) percent majority is required for matters relating to:

(a) Incurring debt;

(b) Initiating new lines of business or capital projects; or

(c) Changing the bylaws of the corporation. The e-Health Corporation shall submit all bylaws changes to the Kentucky e-Health Network Board for review and approval.

Section 6. Reimbursement. (1) Members of the corporation shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties.

(2) Reimbursement shall be consistent with rules established by the Finance and Administration Cabinet for public board members.

Section 7. Duties. (1) The Kentucky e-Health Corporation shall serve as the operational arm of the Kentucky e-Health Board responsible for managing the development and operations of the Kentucky e-Health Network. The corporation may:

(a) Hire staff;

(b) Purchase:

1. Software;

2. Hardware;

3. Equipment; and

4. Supplies;

(c) Offer related e-Health technologies and services;

(d) Issue Requests for Proposal and execute contracts with vendors for the partnership;

(e) Hold governing board and advisory body meetings periodically with members from each of the partners and affected stakeholders;

(f) Partner with:

1. For-profit entities;

2. Nonprofit entities; and

3. Governmental entities;

(g) Enter into business agreements with partnering organizations;

(h) Accept and collect funds to carry out the responsibilities given to it by the Kentucky e-Health Network Board; and

(i) Manage development and implementation of the Kentucky Health Information Partnership project.

(2) The corporation is required to provide quarterly financial and programmatic reports to the Kentucky e-Health Network Board and the Cabinet for Health and Family Services no later than sixty (60) days after the end of a quarter.

(3) The corporation shall adopt bylaws providing for the call of its meeting and operating procedures. Bylaws may be amended at any regular or special meeting of the board, provided that the amendment has been submitted in writing in advance of the meeting at which it is to be considered.

(4) The corporation shall submit, in a format prescribed by the e-Health Network Board, an annual report by September 30 following the end of each state fiscal year to the:

(a) Governor;

(b) Secretaries of the Finance and Administration Cabinet and Cabinet for Health and Family Services;

(c) Interim Joint Committee on Appropriation and Revenue;

(d) Interim Joint Health and Welfare Committee;

(e) Legislative Research Commission; and

(f) Kentucky e-Health Network Board.

Section 8. Advisory Subcommittees. (1) The e-Health Corporation may establish one (1) or more advisory subcommittees for large, multi-year e-health projects.

(2) Advisory subcommittees shall be charged with advising the e-Health Corporation Board of Directors and Kentucky e-Health Network Board on the direction, design, and implementation of designated technology projects and services for providers, clinicians, and consumers.

(3) Advisory subcommittees shall consist of variety of stakeholders, including data suppliers and users that will advise on the functionality, development, and design of technology and services.

(4) Advisory subcommittees will bring recommendations and report to the corporation Board of Directors. The board chair shall appoint one (1) member of the advisory subcommittee to serve as the subcommittee chair who shall serve as the voting member on the e-Health Corporation Board of Directors

(5) The Kentucky e-Health Corporation Board of Directors shall appoint six (6) to ten (10) advisory board members including:

(a) Up to six (6) members from data suppliers, with a minimum of one (1) member representing each organization supplying data for the technology project; and

(b) Up to four (4) members representing data users.

TRUDI L. MATTHEWS, Senior Policy Advisor
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: September 17, 2007

FILED WITH LRC: September 18, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafetena Meeting Room on the first floor of the CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 on November 30. Send written notification of intent to attend the public hearing or written com-

ments 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: Trudi Matthews

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes membership, terms, organization, and duties for the Kentucky e-Health Corporation. The Kentucky e-Health Corporation will be a public-private nonprofit corporation operating under the. auspices of the Kentucky e-Health Network Board

(b) The necessity of this administrative regulation: The Kentucky e-Health Corporation will be a public-private, nonprofit corporation in Kentucky responsible for facilitating and implementing public-private partnerships needed to develop and implement the Kentucky e-Health network and the functions defined in 216.267.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 216.267 authorizes the Kentucky e-Health Board to review and select a business model to be used to implement the Kentucky e-Health Network. A nonprofit corporation model was selected to facilitate public-private collaboration. The Kentucky e-Health Corporation is created as a nonprofit organization and is attached to the Kentucky e-Health Network Board for oversight and governance purposes. This action is consistent with the language found in HB 185 from the 2007 legislative session.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These regulations establish the governance structure of the Kentucky e-Health Corporation with oversight of the Kentucky e-Health Network Board, the Cabinet for Health and Family Services, Finance and Administration Cabinet and the General Assembly in accordance with 216.267. The Kentucky e-Health Network Board cochairs will serve as the initial cochairs of the Kentucky e-Health Corporation. The makeup of the directors of the Kentucky e-Health Corporation mirrors closely the makeup of the e-Health Network Board and there is a regular accountability mechanism through quarterly and annual reporting required under the statute.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will directly affect the Kentucky e-Health Network Board and the Cabinet for Health and Family Services. Indirectly, it potentially will have an impact on the health delivery system across the Commonwealth.

(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 a minimal cost, approximately $30,000 to the cabinet to provide administrative support for the e-Health Corporation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The Kentucky e-Health Network (KeHN) Board was created to lead the development and implementation of an e-Health Network in Kentucky. The KeHN Board, which is attached to the Cabinet for Health and Family Services, quickly ascertained the need to establish a public-private nonprofit entity to facilitate partnerships between private health care entities and public organizations such as state government and the universities. As nearly every other state has recognized, a nonprofit corporation is a necessary agent for affecting change, bringing consensus from diverse groups, financing jointly large technology projects and ensuring the efficient management and operation of the Kentucky e-Health Network. The formation of the Kentucky e-Health Corporation is a minimal cost to CHFS, but the benefits are enormous in the greater efficiency and effectiveness of operations and funding for e-health activities in Kentucky.

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

(a) Initially: Initially, it is anticipated that staffing and meeting expenses will cost CHFS about $30,000. The cabinet will use funds from the federal Medicaid Transformation Grant that CHFS received in February 2007 to cover these costs, in accordance with the approved grant proposal.

(b) On a continuing basis: Over time, the e-Health Corporation will be able to sustain its operational costs by offering e-Health related services to the state and private sector companies as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement this regulation is from the Federal Medicaid Transformation Grant awarded to Kentucky in February 2007.

(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 increase in fees or funding needed to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established either directly or indirectly in this regulation or the authorizing statutes.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because it applies only to the e-Health Corporation.

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 e-Health Network Board and Cabinet for Health and Family Services will be directly impacted. Indirectly, it potentially will affect the health delivery system across the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.267

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? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect. However, because the e-Health Corporation will eventually generate revenue through e-Health related services, this regulation will ensure that the public share of expenses for creating a statewide e-Health Network will be lower than if the Kentucky e-Health Corporation did not exist.

(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 additional revenue generated for state or local government for the first year that this administrative regulation is in effect. It is possible that the revenues generated by the Kentucky e-Health Corporation from its services can be used to sustain and expand the Kentucky e-Health Network faster and more effectively.

(c) How much will it cost to administer this program for the first year? In the first year, it is estimated that $30,000 in staffing costs and meeting expenses will be required, which will be covered by the federal Medicaid Transformation Grant Funding.

(d) How much will it cost to administer this program for subsequent years? Basic operating costs will increase in subsequent years, but the e-Health corporation will become a self-sustaining, nonprofit entity.

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 of Community Based Services
Division of Child Care
(Repealer)

922 KAR 2:002. Repeal of 922 KAR 2:001.

RELATES TO: KRS 17.165, 199.894-199.898
STATUTORY AUTHORITY: KRS 194A.050(1),199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) gives the secretary of the Cabinet for Health and Family Services, the responsibility and authority to promulgate and administer the programs vested in the cabinet to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of Kentucky. KRS 199.896(2) grants authority to the Cabinet for Health and Family Services to establish administrative regulations and standards for day care of children. This administrative regulation acts specifically to repeal 922 KAR 2:001, Definitions for 922 KAR Chapter 2, because the definitions are either no longer used in Chapter 2 or will be moved to the pertinent administration regulation.

Section 1. 922 KAR 2.001, Definitions for 922 KAR Chapter 2 is hereby repealed.

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007
FILED WITH LRC: October 12, 2007 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2007 at 9 a.m. in the Cafetena Meeting Room on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 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: Justin Dearinger

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 2 001, Definitions for 922 KAR Chapter 2, because the definitions are either no longer used in Chapter 2 or have been incorporated into the regulation where the term is used.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 922 KAR 2:001, Definitions for 922 KAR Chapter 2, because the definitions are either no longer used in Chapter 2 or have been incorporated into the regulation where the term is used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 194B.050(1) that gives the secretary of the Cabinet for Health and Family Services the responsibility and authority to promulgate and administer the programs vested in the Cabinet to protect, develop, and maintain the welfare, personal dignity, integrity and sufficiency of the individual citizens of Kentucky. KRS 199.896(2) grants authority to the Cabinet for Health and Family Services to establish administrative regulations and standards for child care of children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by repealing a regulation that is no longer used in 922 KAR Chapter 2.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is necessary to repeal 922 KAR 2.001, Definitions for 922 KAR Chapter 2, because the definitions are either no longer used in Chapter 2 or have been incorporated into the regulation where the term is used.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary because the definitions contained in 922 KAR 2.001 are either no longer used in Chapter 2 or have been incorporated into the regulation where the term is used.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the cabinet's authorization under KRS 194B.050(1) gives the secretary of the Cabinet for Health and Family Services, the responsibility and authority to promulgate and administer the programs vested in the Cabinet to protect, develop, and maintain the welfare, personal dignity, integrity and sufficiency of the individual citizens of Kentucky. KRS 199.896(2) grants authority to the Cabinet for Health and Family Services to establish administrative regulations and standards for day care of children.

(d) How the amendment will assist in the effective administration of the statutes: The regulation repeals 922 KAR 2:001 Definitions for 922 KAR Chapter 2. Terms requiring a definition will be contained in the regulation where the term is used. This will enhance public understanding and review of regulations contained in 922 KAR Chapter 2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the Office of the Inspector General, Division of Regulated Child Care, as of August 9, 2007, there are 2156 Type I child care centers, 131 Type II child care centers, and 838 family child care homes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by the regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will find the pertinent definitions in the applicable regulation.

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

(a) Initially: There will be no additional costs to the cabinet as a result of this amendment.

(b) On a continuing basis: There will be no additional costs to the cabinet as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding is needed for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is no increase in funds or fees 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? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards KRS 17.165, 199.894 to 199.898 194A.050(1) and 199.896(2)

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? No

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Community Based Services, Division of Child Care and the Office of the Inspector General, Division of Regulated Child Care.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.165, 199.894 to 199.898, 194A.050(1), and 199 896(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. There is no effect of this administrative regulation on the expenditures and revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate 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 revenue for the state or local government either.

(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 (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 9, 2007 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 9, 2007 at 10:00 a m , in Room 149 of the Capitol Annex. Senator Richard "Dick" Roeding called the meeting to order, the roll call was taken. The minutes of the September 11, 2007 meeting were approved.

Present were:

Members: Senators Alice Forgy Kerr, Richard "Dick" Roeding and Gary Tapp; and Representatives Robert Damron, Danny Ford, and Ron Weston.

LRC Staff: Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Laura Milam, Emily Caudill, Jennifer Beeler, Laura Napier, and Ellen Steinberg.

Guests: Dr. Jim Applegate, Dennis Taulbee, Council on Postsecondary Education; Debbie Bohannon, Thomas Stephens, Personnel Cabinet; Donald Guier, Albert Becker, James Livers, Department of Revenue; John McCarty, Crushed Stone Association; Dan Waits, Lonnie Campbell, Allen Wilson, Governor's Office for Local Development; Mark Brengelman, Curt Duff, Claude Wagner, Melanie Abner, Kentucky Board of Opthalmic Dispensers; Darin Moore, Kentucky Department of Fish and Wildlife Resources; Lona Brewer, John Lyons, Kentucky Division for Air Quality; Kevin Brown, Jeff Mosley, Heidi Schussler, Larry Taylor, Kentucky Department of Education; James Cundy, Barbara Teague, Kentucky Department for Libraries and Archives; Chuck Stribling, Department of Labor; Virginia Davis, Tony Royalty, Office of Alcoholic Beverage Control; Randy Azbill, Kentucky Office of Insurance; Commissioner Deborah Anderson, Pat Brookman, Karen Cooke, Shirley Eldridge, Melissa Dalton Hopkins, Amy Moore, Christine Pietrandrea, Phyllis Sosa, Department for Aging and Independent Living; Virginia Carrington, Elizabeth Caywood, Justin Deanger, Rosanne Barkley, Department for Community Based Services; John Underwood, Assisted Living; Bernie Vonderheide, Kentuckians for Nursing Home Reform; Kaycie Len Carter, Community Farm Alliance.

The Administrative Regulation Review Subcommittee met on Tuesday, October 9, 2007 and submits this report:

COUNCIL ON POSTSECONDARY EDUCATION: Public Education Institutions

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky. Jim Applegate, vice president of academic affairs; and Dennis Taulbee, general counsel, represented the council.

Co-Chair Damron stated that he commended the council for promulgating this administrative regulation and working with legislators throughout the regulatory process to resolve concerns. He stated that he hoped that legislation during the 2008 Regular Session would eliminate that exemption so that the higher education institutions would promulgate administrative regulations, instead of issuing policies.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (b) clarify that the college readiness standards established in this administrative regulation shall not release institutions from the requirements established in 13 KAR 2.060; (2) to amend Section 3 to clarify the requirements relating to the precollege curriculum; (3) to amend Sections 3 and 7 to reference the Program of Studies that was already incorporated in 704 KAR 3:303, rather than incorporate it in this administrative regulation; (4) to amend Section 5 to require compliance with the council's General Education Transfer Policy and Implementation Guidelines, rather than program specific agreements; (5) to amend Sections 6 and 7 to require adherence to the Kentucky Statement Public Postsecondary Placement Policy in English and Mathematics, which is incorporated by reference; and (6) to amend Sections 1, 2, 3, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Office of the Secretary: Classified

101 KAR 2:120. Incentive programs. Tom Stephens, general counsel, and Debbie Bohannon, chairperson of the employee suggestion system, represented the cabinet.

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 Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 3 to: (a) update the edition dates for the material incorporated by reference; and (b) revise the two (2) forms to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; State Assessment

103 KAR 8:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal. James Livers, assistant director; Donald Guier, assistant director; and Albert Becker, branch manager, represented the department.

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 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 8.140. Ad valorem taxation of machinery actually used in the manufacturing of crushed stone, sand, and gravel.

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 the TITLE 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.

103 KAR 8:150. Ad valorem taxation of machinery actually used in the manufacturing of hot mix asphalt.

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.

GENERAL GOVERNMENT: Governor's Office for Local Development: County Budget

109 KAR 15 020. State Local Officer Policy Manual. Dan Waits, executive director; Lonnie Campbell, branch manager; and Alan Wilson, general counsel, represented the office.

In response to a question by Co-Chair Roeding, Mr Waits stated that before adoption, the policy manual was reviewed by the Kentucky Association of Counties, the treasurers' association, judges, magistrates, sheriffs, and other local officials. He stated that the manual would be distributed at required regional training sessions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (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; (3) to amend Section 1 to clarify the applicability of the manual incorporated by reference; (4) to amend Section 2 to provide for a revised version of the manual incorporated by reference; and (5) to amend various sections of the manual incorporated by reference to make technical corrections and to clarify the requirements pertaining to budget publication. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Board of Ophthalmic Dispensers: Board

201 KAR 13:080. Operation and inspection of optical establishments. Melanie Abner represented the board. Claude Wagner, director, represented the Division of Occupations and Professions; and Curt Duff, executive director, represented the Society of Dispensing Opticians.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (2) to amend Sections 1, 3, 4, 5, and 7 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (3) to amend Section 7 to reduce the maximum fine amount from $3,000 to $1,000. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division for Air Quality: Hazardous Pollutants

401 KAR 57:002. 40 C.F.R. Part 61 national emission standards for hazardous air pollutants. Lona Brewer, manager, represented the division.

In response to a question by Co-Chair Roeding, Ms. Brewer stated that the department filed comments on a proposed federal regulation that will lower emission standards.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; 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.

Asbestos

401 KAR 58:025. 40 C.F.R. Part 61 national emission standard for asbestos.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A, and (3) to amend Section 3 to insert contact information for the Frankfort regional office. Without objection, and with agreement of the agency, the amendments were approved.

New Source Performance Standards

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; 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.

401 KAR 60:670. 40 C.F.R. Part 60 standards of performance for nonmetallic mineral processing plants.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend Section 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.

General Standards of Performance

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A and to update references to the federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: Exceptional and Handicapped Programs

707 KAR 1:280. Definitions. Kevin Brown, assistant general counsel, and Larry Taylor, director, Division for Exceptional Children Services, represented the department. Heidi Schissler, legal director, Kentucky Protection and Advocacy, appeared in support of this administrative regulation and 707 KAR 1:360.

Subcommittee staff stated that these administrative regulations were found to be deficient by the subcommittee at its August meeting and then deferred at the request of the department. The department filed additional amendments to change the language that had prompted the subcommittee's findings of deficiency. The Board of Education requested that the subcommittee reconsider and remove its findings of deficiency, as authorized by KRS Chapter 13A, and approve the new amendments.

In response to a question by Co-Chair Roeding, Ms. Schissler stated that the department had worked with Kentucky Protection and Advocacy and her organization supported the proposed amendments to the two administrative regulations.

In response to questions by Co-Chair Roeding, Mr. Brown stated that the amendment defined a reasonable time period as ten school days. In addition to the changes in 707 KAR 1:360, the department found two other instances where the term "reasonableness" was used in administrative regulations that had already been referred to the Interim Joint Committee on Education. The department intended to make similar changes to those administrative regulations at the second committee's review.

A motion was made and seconded to remove the findings of deficiency for these administrative regulations and the findings of deficiency were removed.

A motion was made and seconded to approve the following amendments: (1) to expand the definition of "parent" in Section 1 to include a foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions for the child, (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (3) to amend Section 1 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

707 KAR 1:360. Confidentiality of information.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to require a school district to respond to a parent's request for an amendment to a child's record within ten (10) school days rather than within a reasonable time; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (3) to amend Sections 1, 4, and 6 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Libraries and Archives: Public Records Division: Archives

725 KAR 1:030. Scheduling public records for retention and disposal; procedures. Barbara Teague, acting director; James Cundy, state records manager; and Jeff Mosley, general counsel, represented the division.

In response to questions by Co-Chair Damron, Ms. Teague stated that the Administrative Office of the Courts (AOC) created its

own retention schedule, approved by the chief justice, which was submitted to the department for concurrence. She stated that AOC had imposed a moratorium on records destruction.

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 this administrative regulation; and (2) to amend the material incorporated by reference to update citations and correct typographical errors. Without objection, and with agreement of the agency, the amendments were approved.

725 KAR 1:061. Records retention schedules; authorized schedules.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (2) to amend the material incorporated by reference to add edition dates. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor: Occupational Safety and Health

803 KAR 2.422. Rollover protective structures; overhead protection. Chuck Stribling, safety standards specialist, represented the department.

Department of Public Protection: Office of Alcohol Beverage Control: Licensing

804 KAR 4.410. ABC schedules and forms incorporated by reference. Tony Royalty, deputy executive director; and Virginia Davis, resource management analyst, represented the office.

In response to a question by Co-Chair Roeding, Ms. Davis stated there was no increase in fees.

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 Section 2 to correct titles of material incorporated by reference and comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Insurance: Health Insurance Contracts

806 KAR 17.250. Notification requirements for drug benefits. Randy Azbill, director, represented the office.

In response to a question by Co-Chair Roeding, Mr. Azbill stated the office was trying to increase the number of insurance companies doing business in Kentucky, especially in the health insurance area.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1.240 Certification of assisted-living communities. Deborah Anderson, Commissioner; and Phyllis Sosa, branch manager, represented the division. John Underwood, executive director, Kentucky Assisted Living Facilities Association, appeared in support of this administrative regulation. Bernie Vonderheide, of Kentuckians for Nursing Home Reform, appeared in opposition to this administrative regulation.

Mr. Vonderheide stated that the promulgation of this administrative regulation should be slowed and it should be amended to adopt policies to protect consumers. He stated assisted living communities should have oversight similar to the nursing home ombudsman services and that personnel quality control should be improved through the addition of random drug tests for employees. He stated that facilities should provide simple medical assistance to their residents. He stated that inspection results should be immediately made public through placement on the department's Web site and a Web site should be established that shows ownership of the facilities as well as information about how to file a complaint.

Co-Chair Roeding stated that some of the suggested changes could only be made through legislation and that the appropriate place to discuss those changes was before the Health and Welfare Committee.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 4 to clarify how a certification fee is prorated; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 11 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: K-Tap, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). Elizabeth Caywood, Justin Dearinger, and Virginia Carrington represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1, 3, and 5 to correct statutory citations; (2) to amend Sections 3 and 5 to delete references to Tobacco Loss Assistance Program payments, which no longer exist; and (3) to amend Sections 1, 3, 5, 8, and 15 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 2:050. Time and manner of payments.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correctly state the function of this administrative regulation; and (2) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Child Care: Day Care

922 KAR 2:160. Child Care Assistance Program. Elizabeth Caywood and Justin Deanger represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend Sections 4 through 7 to clarify the eligibility requirements for the program; and (3) to amend Sections 1 through 14, and 16 to make technical corrections and comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:180. Requirements for Registered Child Care Providers in the Child Care Assistance Program.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify the function of this administrative regulation; and (2) to amend Sections 1 through 6, 8, and 9 to make technical corrections and comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:390 & E. Employment after Retirement.

GENERAL GOVERNMENT: Kentucky Board of Chiropractic Examiners: Board

201 KAR 21:032. Repeal of 201 KAR 21:031.

201 KAR 21:060. Clinics; offices.

201 KAR 21:065. Professional advertising; Seventy-two (72) hour right of rescission.

COMMERCE CABINET: Kentucky Department of Fish and Wildlife Resources:
Licensing

301 KAR 5.050. Purchasing licenses electronically. Darin Moore, director, represented the department.

In response to questions by Senator Tapp, Mr. Moore stated that he knew of no way to satisfy the federal requirement to obtain the applicant's social security number by obtaining a driver's license number and cross-referencing with the driver's license database. He stated that no federal money was tied to the requirement and he did not know what the repercussions would be if Kentucky did not comply with the requirement. He stated that an applicant would personally input his social security number into a keypad and was not required to show his social security card. He stated that new terminals and keypads were purchased for each point of sale location. He stated that clerks were trained and software purchased to maintain the security of the numbers. He stated that licenses can be purchased online, by telephone, or in person.

In response to questions by Senator Kerr, Mr. Moore stated that only the social security number was needed and only at the time the license was purchased.

In response to questions by Co-Chair Damron, Mr. Moore stated that this administrative regulation only addressed internet sales and that 301 KAR 5 030 requiring social security numbers for direct sales went through the subcommittee in April. He stated that social security numbers were required for harvest data as well and that because social security numbers contain no letters, there was less risk of data entry errors.

In response to a question by Senator Tapp, Mr. Moore stated that the number of deer deaths due to blue tongue disease reported on the department's website was based on the numbers reported to conservation officers. He stated he would find out if there was any additional support for the reported numbers.

In response to questions by Co-Chair Roeding, Mr. Moore stated that conservation officers and other officials passed out cards with contact numbers for the department. He stated that a separate category for senior licenses had been created rather than a joint category for seniors and individuals with disabilities. He stated that would reduce confusion and provide better data.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

A motion was made and seconded that the subcommittee review 301 KAR 5.030, which requires an applicant for a license to provide a social security number when applying at a point of sale. Without objection, it was ordered that the subcommittee will review the administrative regulation at its November meeting.

A motion was made and seconded to defer consideration of this administrative regulation. Mr. Moore stated that the department would agree to defer this administrative regulation. Without objection and with agreement of the agency, this administrative regulation was deferred.

DEPARTMENT OF AGRICULTURE: Livestock Sanitation

302 KAR 20:010. Definitions for 302 KAR Chapter 20.

302 KAR 20 020. General requirements.

302 KAR 20 030. Authority to inspect, test, identify, remove and dispose of livestock and poultry.

302 KAR 20.040. Entry into Kentucky.

302 KAR 20.065. Sale and exhibition of Kentucky origin animals in Kentucky.

302 KAR 20.261. Approved Kentucky Horse Sale.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: Pupil Transportation

702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

Health and Physical Education Programs

704 KAR 4 020. School health services.

Office of Learning Support Services

704 KAR 7:101. Repeal of 704 KAR 7:100. Approval of operation of alternative education programs for purposes of drivers' license revocation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor: Department of Workers' Claims

803 KAR 25:040. Average weekly wage certification.

803 KAR 25:251. Repeal of 803 KAR 25:250.

Department of Public Protection: Office of Insurance: Health Insurance Contracts

806 KAR 17:545 & E. ICARE Program employer eligibility, application process, and requirements.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Human Support Services: Division of Child Abuse and Domestic Violence Services: Child Abuse and Domestic Violence Services

920 KAR 2:040 & E. Standards for children's advocacy centers.

The Subcommittee adjourned at 11:05 until November 2007.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 17, 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 October 17, 2007, having been referred to the Committee on October 3, 2007, pursuant to KRS 13A.290(6):

201 KAR 8:220
201 KAR 20.251
201 KAR 20 280
201 KAR 20.310
201 KAR 20 320
201 KAR 20:340
201 KAR 20.350
201 KAR 20:450
900 KAR 6.030
902 KAR 45:075
902 KAR 45:120
902 KAR 105:010
902 KAR 105:030
902 KAR 105.040
902 KAR 105 061
902 KAR 105:070
902 KAR 105:081
922 KAR 1.300
922 KAR 1:310

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 17, 2007 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E - 2

The Locator Index lists all administrative regulations published in VOLUME 34 of the Administrative Register from July, 2007 through June, 2008. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 33 are those administrative regulations that were originally published in VOLUME 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

KRS Index E - 10

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 34 of the Administrative Register.

Subject Index E - 17

The Subject Index is a general index of administrative regulations published in VOLUME 34 of the Administrative Register, and is mainly broken down by agency.

VOLUME 33

The administrative regulations listed under VOLUME 33 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations 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.)

Regulation Number	33 Ky.R. Page No.	Effective Date
31 KAR 5.010E	3325	4-2-07
Replaced		(See 34 Ky.R.)
201 KAR 20:070E	3586	5-11-07
Replaced	4205	8-16-07
301 KAR 2.221E	1493	11-1-06
301 KAR 2:222E	1494	11-1-06
301 KAR 2:223E	1500	11-1-06
502 KAR 32.010	3327	4-12-07
Replaced		(See 34 Ky.R.)
806 KAR 17:540E	1233	10-13-06
806 KAR 17:545E	1235	10-13-06
806 KAR 17:555E	1238	10-13-06
902 KAR 45:150E	1502	11-14-06
907 KAR 1:025E	3143	3-1-07
Replaced	4186	7-6-07
907 KAR 1:155		
Resubmitted	1058	9-1-06
907 KAR 3:010E		
Resubmitted	1062	9-1-06
908 KAR 2.190E	1507	10-17-06

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Regulation Number	33 Ky.R. Page No.	Effective Date
11 KAR 4 080		
Amended	3224	
As Amended	3589	7-6-07
11 KAR 5:033		
Amended	3225	
As Amended	3589	7-6-07
11 KAR 5:034		
Amended	3226	
As Amended	3590	7-6-07
11 KAR 5:140		
Amended	3228	7-6-07
11 KAR 6.010		
Amended	3230	
As Amended	3590	7-6-07
11 KAR 16:010		
Amended	3232	
As Amended	3592	7-6-07
11 KAR 16:070	3304	
As Amended	3593	7-6-07
16 KAR 1:030		
Amended	3423	7-19-07
16 KAR 9:080	3567	(See 34 Ky.R.)
17 KAR 1:020	3078	
As Amended	3593	7-6-07
31 KAR 3:010		
Amended	3235	
As Amended	3595	7-6-07
31 KAR 4:100		
Amended	3237	
As Amended	3596	
31 KAR 5 010		
Amended	3425	(See 34 Ky R)
101 KAR 2 046		
Amended	4195	(See 34 Ky.R.)
101 KAR 2.056		
Amended	4197	(See 34 Ky R)
101 KAR 2:066		
Amended	4199	(See 34 Ky R)
102 KAR 1:030		
Amended	3427	(See 34 Ky.R.)
102 KAR 1:036		
Amended	3428	(See 34 Ky.R)
102 KAR 1:038		
Amended	3430	(See 34 Ky.R)
102 KAR 1:175		
Amended	3431	(See 34 Ky R.)
103 KAR 20.500	1013	
106 KAR 5:005	3113	
As Amended	3597	7-6-07
106 KAR 5.010	3114	
As Amended	3598	7-6-07
106 KAR 5:020	3116	
As Amended	3599	7-6-07
106 KAR 5:030	3118	
As Amended	3600	7-6-07
106 KAR 5 040	3120	
As Amended	3601	7-6-07
201 KAR 2:250		
Amended	4201	(See 34 Ky.R.)
201 KAR 2.260	3305	
As Amended	3602	6-20-07
201 KAR 9:460	4269	(See 34 Ky.R.)
201 KAR 11.220		
Amended	3434	8-31-07
201 KAR 16.010		
Amended	3238	(See 34 Ky R)
201 KAR 16 060		
Amended	3240	
201 KAR 18:040		
Amended	4203	8-31-07
201 KAR 18:111	3569	(See 34 Ky.R.)
201 KAR 20.070		
Amended	4205	8-16-07
201 KAR 20 370		
Amended	4207	8-16-07
201 KAR 20.411		
Amended	4209	8-16-07
201 KAR 22.020		
Amended	3436	8-16-07
201 KAR 22:040		
Amended	3438	8-16-07
201 KAR 30:180		
Amended	4211	(See 34 Ky.R.)
201 KAR 36 070		
Amended	3242	6-20-07
202 KAR 6:020		
Amended	4214	(See 34 Ky.R.)
202 KAR 6.030		
Amended	4217	(See 34 Ky R)
202 KAR 6 060		
Amended	4218	(See 34 Ky R)
202 KAR 6:070		
Amended	4220	(See 34 Ky R.)
202 KAR 6 100		
Amended	4221	(See 34 Ky R.)
301 KAR 2:122	2831	6-13-07
301 KAR 2:132		
Amended	3440	(See 34 Ky.R.)
301 KAR 2:172		
Amended	3444	(See 34 Ky.R.)
301 KAR 2:174		
Repealed	3570	8-6-07
301 KAR 2.175	3570	8-6-07
301 KAR 2:177	3571	8-6-07

Regulation Number	33 Ky.R. Page No.	Effective Date
301 KAR 2:178		
Amended	3447	8-6-07
301 KAR 2:179		
Repealed	3571	8-6-07
301 KAR 2:185		
Amended	3243	
As Amended	3603	6-13-07
301 KAR 2:195		
Amended	3452	(See 34 Ky.R.)
301 KAR 2:251		
Amended	3426	
As Amended	3604	6-13-07
301 KAR 3 022		
Amended	3456	8-6-07
301 KAR 5.030		
Amended	4224	8-23-07
401 KAR 57:002		
Amended	4227	(See 34 Ky.R.)
401 KAR 58 025		
Amended	4229	(See 34 Ky.R)
401 KAR 60 005		
Amended	4231	(See 34 Ky.R)
401 KAR 60:670		
Amended	4234	(See 34 Ky R.)
401 KAR 63:002		
Amended	4236	
401 KAR 63:023*(r)*	4270	
401 KAR 64:001	4271	
401 KAR 64.005	4275	
401 KAR 64.010	4279	
401 KAR 64:020	4283	
401 KAR 64 030	4286	
401 KAR 64 050	4288	
501 KAR 6 020		
Amended	4241	(See 34 Ky.R)
501 KAR 6 030		
Amended	4243	(See 34 Ky R)
501 KAR 6 070		
Amended	4245	(See 34 Ky.R.)
501 KAR 6:240		
Amended	4247	(See 34 Ky R.)
502 KAR 20 020		
Amended	4249	(See 34 Ky.R.)
502 KAR 32 010		
Amended	3459	(See 34 Ky.R)
503 KAR 1 170		
Amended	4253	(See 34 Ky.R.)
603 KAR 4 045		
Amended	3042	
As Amended	4162	7-6-07
701 KAR 5:110		
Amended	3045	7-6-07
702 KAR 7:065		
Amended	3461	(See 34 Ky.R.)
707 KAR 1 280		
Amended	3463	(See 34 Ky.R.)
707 KAR 1:290		
Amended	3468	
707 KAR 1:300		
Amended	3470	(See 34 Ky.R.)
707 KAR 1:310		
Amended	3473	(See 34 Ky.R)
707 KAR 1:320		
Amended	3476	(See 34 Ky.R)
707 KAR 1.331	3572	
707 KAR 1:340		
Amended	3480	(See 34 Ky R.)
707 KAR 1:350		
Amended	3488	(See 34 Ky.R.)
707 KAR 1:360		
Amended	3490	
707 KAR 1:370		
Amended	3492	(See 34 Ky.R)
707 KAR 1·380		
Amended	3496	(See 34 Ky R.)
802 KAR 1:010		
Amended	2202	
Amended	3217	
As Amended	4164	7-6-07
803 KAR 2:300		
Amended	3499	(See 34 Ky.R.)
803 KAR 2:305		
Amended	3501	(See 34 Ky.R.)
803 KAR 2:318		
Amended	3503	(See 34 Ky.R.)
804 KAR 9·040		
Amended	3506	8-6-07
805 KAR 7:010		
Amended	3076	
Amended	3413	(See 33 Ky.R.)
805 KAR 7:100	3124	
Amended	3414	(See 33 Ky.R.)
805 KAR 11:001	3126	(See 34 Ky.R.)
Amended	3416	
805 KAR 11.010	3128	(See 34 Ky.R.)
Amended	3417	
805 KAR 11:020	3130	(See 34 Ky.R.)
Amended	3419	
806 KAR 6 120	4290	(See 34 Ky.R.)
806 KAR 12:120	4292	(See 34 Ky R)
806 KAR 12:140	4294	(See 34 Ky R)
806 KAR 12:150	4299	(See 34 Ky R.)
806 KAR 12:160	4301	(See 34 Ky R.)
806 KAR 12:170	4305	(See 34 Ky R.)
806 KAR 14:005		
Amended	4258	(See 33 Ky.R.)
806 KAR 15 060	4307	(See 34 Ky R.)
806 KAR 15 070	4311	(See 34 Ky.R.)
815 KAR 4.010		
Amended	3249	
As Amended	4167	7-6-07
815 KAR 7:120		
Amended	3250	
As Amended	4168	7-6-07
815 KAR 7:125		
Amended	3253	(See 34 Ky.R.)
815 KAR 10 060		
Amended	3255	
As Amended	4169	7-6-07
815 KAR 20 015	3308	
As Amended	4172	7-6-07
815 KAR 20.020		
Amended	3258	7-6-07
815 KAR 20:078		
Amended	3262	
815 KAR 20:110		
Amended	3264	
As Amended	4173	7-6-07
815 KAR 20.120		
Amended	3266	
As Amended	4174	7-6-07
815 KAR 20:130		
Amended	3273	
As Amended	4180	7-6-07
815 KAR 20:150		
Amended	3277	
As Amended	4183	7-6-07
815 KAR 35.060		
Amended	3279	
As Amended	4184	7-6-07
820 KAR 1.001		
Amended	3508	(See 34 Ky.R)
820 KAR 1:015		
Amended	3511	(See 34 Ky R)

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820 KAR 1:025		
Amended	3512	(See 34 Ky R)
820 KAR 1:029		
Amended	3514	8-31-07
820 KAR 1.032		
Amended	3516	(See 34 Ky.R.)
820 KAR 1.036		
Amended	3518	(See 34 Ky.R.)
820 KAR 1.046		
Amended	3522	(See 34 Ky.R)
820 KAR 1.050		
Amended	3525	(See 34 Ky.R.)
820 KAR 1:055		
Amended	3526	(See 34 Ky.R.)
820 KAR 1:056		
Amended	3528	8-31-07
820 KAR 1:057		
Amended	3530	(See 34 Ky R)
820 KAR 1:058		
Amended	3531	(See 34 Ky R.)
820 KAR 1 120		
Amended	3536	(See 34 Ky R.)
900 KAR 6 050		
Amended	3282	(See 34 Ky.R.)
902 KAR 2:080		
Amended	3295	(See 34 Ky R)
902 KAR 105 040		
Amendment	1733	
902 KAR 105:061	1759	
902 KAR 105:070		
Amendment	1736	
907 KAR 1.025		
Amended	3297	
As Amended	4186	7-6-07
907 KAR 3 005		
Amended	4259	
907 KAR 3 010		
Amended	4264	
908 KAR 3 050		
Amended	3537	(See 34 Ky.R)
908 KAR 3.060		
Amended	3539	(See 34 Ky.R.)
922 KAR 1:300		
Amended	3543	(See 34 Ky.R)
922 KAR 1:310		
Amended	3552	(See 34 Ky.R.)

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(Note: Emergency regulations 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.)

31 KAR 5 010E		(See 33 Ky.R)
Replaced	12	8-6-07
103 KAR 50 020E	531	7-31-07
103 KAR 50 030E	703	8-16-07
103 KAR 50.040E	532	7-31-07
103 KAR 50.050E	704	8-16-07
105 KAR 1:390E	534	8-15-07
106 KAR 2 020E	156	6-25-07
301 KAR 2:225E	907	10-15-07
307 KAR 1 040E	909	10-8-07
401 KAR 51:001E	912	9-28-37
401 KAR 51:017E	924	9-28-37
401 KAR 51:052E	939	9-28-37
401 KAR 52:001E	953	9-28-37
900 KAR 7.020E	958	9-18-37
502 KAR 32:010		(See 33 Ky.R.)
Replaced	27	8-6-07
806 KAR 17:180E	537	7-13-07
806 KAR 17:545E	157	6-29-07
806 KAR 17:545E	161	6-29-07
907 KAR 1:015E	164	7-12-07
907 KAR 1:145E	167	7-12-07
907 KAR 1:170E	181	7-12-07
907 KAR 1:672E	185	7-12-07
907 KAR 3:005E	190	7-12-07
907 KAR 3:010E	195	7-12-07
907 KAR 3:090E	199	7-12-07
920 KAR 2:040E	5	6-4-07
922 KAR 1:050E	212	7-12-07
922 KAR 1:360E	216	6-28-07

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		
Amended	93	9-10-07
11 KAR 5 001		
Amended	822	
11 KAR 5 034		
Amended	824	
11 KAR 5:145		
Amended	106	9-10-07
13 KAR 2:020		
Amended	108	
Amended	590	
As Amended	961	
16 KAR 1:010		
Amended	1074	
16 KAR 1:030		(See 33 Ky.R.)
As Amended	9	
16 KAR 2 010		
Amended	1079	
16 KAR 4.010		
Amended	1079	
16 KAR 5.010		
Amended	1081	
16 KAR 8.022	1297	
16 KAR 9.080		(See 33 Ky R)
As Amended	10	7-19-07
31 KAR 4:210		
Amended	826	
31 KAR 5:010		(See 33 Ky R.)
As Amended	12	8-6-07
31 KAR 5:031	888	7-19-07
31 KAR 6:030		
Amended	112	
As Amended	540	
101 KAR 2 046		(See 33 Ky R.)
As Amended	223	8-31-07
101 KAR 2:056		(See 33 Ky R.)
As Amended	224	8-31-07
101 KAR 2.066		(See 33 Ky R.)
As Amended	225	8-31-07
101 KAR 2.120		
Amended	614	
As Amended	964	
101 KAR 2.210		
Amended	1091	
102 KAR 1:030		(See 33 Ky R.)
As Amended	227	8-31-07
102 KAR 1.036		(See 33 Ky R.)
As Amended	228	8-31-07
102 KAR 1:038		(See 33 Ky.R.)
As Amended	228	8-31-07

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102 KAR 1:175		(See 33 Ky.R.)
As Amended	13	7-19-07
103 KAR 8:130	673	
As Amended	967	
103 KAR 8:140	374	
As Amended	967	
103 KAR 8:150	675	
As Amended	968	
103 KAR 50.020	677	
103 KAR 50:030	889	
103 KAR 50:040	678	
103 KAR 50.050	890	
105 KAR 1:180		
Amended	115	
As Amended	541	
105 KAR 1.200		
Amended	117	
As Amended	542	
105 KAR 1:240		
Amended	119	
As Amended	544	
105 KAR 1:270		
Amended	121	
As Amended	545	
105 KAR 1:380		
Amended	124	
As Amended	547	
105 KAR 1:390	680	
106 KAR 2:020		
As Amended	708	
109 KAR 13.010		
Amended	827	
109 KAR 15 020		
Amended	616	
As Amended	968	
200 KAR 17:011	144	
As Amended	548	
201 KAR 1:160		
Amended	1093	
201 KAR 2:040		
Amended	1095	
201 KAR 2:250		(See 33 Ky.R.)
As Amended	229	8-16-07
201 KAR 8:220		
Amended	331	
201 KAR 8:450		
Amended	126	9-19-07
201 KAR 9.460		(See 33 Ky.R)
As Amended	231	8-16-07
201 KAR 11:121		
Amended	829	
201 KAR 11·170		
Amended	831	
201 KAR 11:175		
Amended	834	
201 KAR 11:210		
Amended	836	
201 KAR 11:230		
Amended	838	
201 KAR 11:240	893	
201 KAR 11.450		
Amended	843	
201 KAR 13.080		
Amended	618	
As Amended	968	
201 KAR 14:050		
Amended	332	
As Amended	708	
201 KAR 16:010		(See 33 Ky.R.)
As Amended	15	8-6-07
201 KAR 18:040		
Amended	1097	
201 KAR 18.072		
Amended	1099	
201 KAR 18.110		
Repealed	17	8-6-07
201 KAR 18:111		(See 33 Ky.R.)
As Amended	17	8-6-07
201 KAR 18:196	1299	
201 KAR 20:260		
Amended	333	
201 KAR 20:270		
Amended	336	
201 KAR 20.280		
Amended	338	
As Amended	709	
201 KAR 20 290		
Amended	341	
201 KAR 20:310		
Amended	344	
As Amended	711	
201 KAR 20:320		
Amended	347	
As Amended		
201 KAR 20:340		
Amended	349	
As Amended	714	
201 KAR 20:350		
Amended	350	
As Amended	715	
201 KAR 20:360		
Amended	352	
201 KAR 20:450		
Amended	355	
As Amended	715	
201 KAR 20:470		
Amended	1100	
201 KAR 21:032	683	
201 KAR 21.060		
Amended	619	
201 KAR 21:065		
Amended	621	
201 KAR 22:045		
Amended	1105	
201 KAR 30:180		(See 33 Ky.R)
As Amended	231	8-16-07
201 KAR 40:020		
Amended	1107	
201 KAR 40.025	1301	
201 KAR 40·027	1303	
201 KAR 40 030		
Amended	1110	
201 KAR 40:150	1304	
201 KAR 40:155	1306	
201 KAR 40:160	1307	
202 KAR 6:020		(See 33 Ky R.)
As Amended	233	8-31-07
202 KAR 6:030		(See 33 Ky.R.)
As Amended	235	8-31-07
202 KAR 6.060		(See 33 Ky.R.)
As Amended	236	8-31-07
202 KAR 6.070		(See 33 Ky.R.)
As Amended	236	8-31-07
202 KAR 6:100		(See 33 Ky.R.)
As Amended	238	8-31-07
300 KAR 1:010		
Amended	357	
As Amended	717	
301 KAR 1 015		
Amended	364	
As Amended	724	
301 KAR 1:016		
Amended	845	
301 KAR 1:140		

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Amended	848	
301 KAR 1:155		
Amended	367	
Amended	850	
301 KAR 1:201		
Amended	369	
301 KAR 1:410		
Amended	374	
301 KAR 2:132		(See 33 Ky R)
As Amended	17	8-6-07
301 KAR 2:172		(See 33 Ky.R.)
As Amended	20	8-6-07
301 KAR 2.195		(See 33 Ky.R.)
As Amended	22	8-6-07
301 KAR 2.225		
Amended	1113	
301 KAR 3 022		
Amended	852	8-6-07
301 KAR 5 050		
Amended	623	
301 KAR 5:100	1309	
302 KAR 20:010		
Amended	377	
Amended	773	
302 KAR 20.020		
Amended	379	
Amended	775	
302 KAR 20 030		
Amended	382	
Amended	777	
302 KAR 20.040		
Amended	383	
Amended	779	
302 KAR 20 065		
Amended	390	
Reprint	525	
Amended	785	
302 KAR 20.261	507	
Amended	790	
304 KAR 1.040		
Amended	855	
307 KAR 1.040	1311	
401 KAR 51:001		
Amended	1115	
401 KAR 51:017		
Amended	1128	
401 KAR 51:052		
Amended	1143	
401 KAR 52:001		
Amended	1156	
401 KAR 57.002		(See 33 Ky.R.)
Amended	594	
As Amended	969	
401 KAR 58.025		(See 33 Ky.R.)
Amended	596	
As Amended	970	
401 KAR 60.005		(See 33 Ky.R.)
Amended	598	
As Amended	971	
401 KAR 60:670		(See 33 Ky.R.)
Amended	601	
As Amended	973	
401 KAR 63.002		(See 33 Ky.R.)
Amended	603	
As Amended	974	
501 KAR 2:020		
Amended	1161	
501 KAR 2:030		
Amended	1162	
501 KAR 2:040		
Amended	1163	
501 KAR 2.050		
Amended	1164	
501 KAR 2:060		
Amended	1166	
501 KAR 2:070		
Amended	1168	
501 KAR 3:010		
Amended	1169	
501 KAR 3:020		
Amended	1171	
501 KAR 3:040		
Amended	1173	
501 KAR 3.050		
Amended	1175	
501 KAR 3:060		
Amended	1179	
501 KAR 3.070		
Amended	1181	
501 KAR 3 080		
Amended	1183	
501 KAR 3.090		
Amended	1184	
501 KAR 3.100		
Amended	1186	
501 KAR 3:130		
Amended	1188	
501 KAR 3:140		
Amended	1190	
501 KAR 6:020		(See 33 Ky.R.)
As Amended	239	8-31-07
501 KAR 6:030		(See 33 Ky.R.)
As Amended	240	8-31-07
501 KAR 6:070		(See 33 Ky.R)
As Amended	242	8-31-07
501 KAR 6:240		(See 33 Ky.R.)
As Amended	243	8-31-07
501 KAR 6:050		
Amended	127	
501 KAR 6:999		
Amended	856	
501 KAR 7:040		
Amended	1192	
501 KAR 7:080		
Amended	1193	
501 KAR 7.090		
Amended	1195	
501 KAR 7.100		
Amended	1197	
501 KAR 13:010		
Amended	1198	
502 KAR 13:010		
Amended	1200	
502 KAR 13:030	1313	
502 KAR 13:040	1315	
502 KAR 13:050	1317	
502 KAR 13:060	1318	
502 KAR 13:070	1319	
502 KAR 13:080	1321	
502 KAR 20:020		(See 33 Ky R.)
As Amended	243	8-31-07
502 KAR 32:010		(See 33 Ky.R.)
As Amended	27	8-6-07
503 KAR 1:170		(See 33 Ky.R.)
As Amended	245	8-31-07
503 KAR 3:110	1322	
601 KAR 1:025		
Amended	395	
601 KAR 13:070		
Amended	860	
603 KAR 5.320		
Amended	862	
605 KAR 1:031	684	
Amended	1003	

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701 KAR 5:130	1327	
702 KAR 5:080		
Amended	624	
702 KAR 7:065		(See 33 Ky.R.)
Amended	40	
As Amended	726	9-10-07
703 KAR 5:170		
Amended	1203	
704 KAR 4:020		
Amended	628	
704 KAR 7:101	685	
707 KAR 1.280		(See 33 Ky.R.)
Amended	41	
As Amended	977	
707 KAR 1:290		
As Amended		
As Amended	548	
707 KAR 1:300		(See 33 Ky.R.)
As Amended	550	
707 KAR 1:310		(See 33 Ky.R.)
As Amended	551	
707 KAR 1:320		(See 33 Ky.R.)
Amended	46	
As Amended	553	
707 KAR 1:340		(See 33 Ky.R.)
Amended	51	
As Amended	556	
707 KAR 1:350		(See 33 Ky.R.)
As Amended	563	
707 KAR 1:360		
As Amended	981	
707 KAR 1:370		(See 33 Ky.R.)
As Amended	564	
707 KAR 1:380		(See 33 Ky.R.)
As Amended	567	
725 KAR 1:030		
Amended	398	
Amended	792	
As Amended	982	
725 KAR 1:061		
Amended	793	
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(r) 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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