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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet August 12, 2008 at 10 a.m. in room 149 Capitol Annex. See tentative agenda on pages 217-218 of this Administrative Register.
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201 KAR 23:070. Qualifying education and qualifying experience under supervision. ( Written Comments Received)

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300 KAR 6.020. Administration of Kentucky Rock Fence Preservation Program.

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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 be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure
After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
STATEMENT OF EMERGENCY
201 KAR 27:100E

This administrative regulation must be placed into effect immediately in order to have the licensing criteria in place when HB 684 becomes effective on July 15, 2008. HB 684 creates the requirement that amateur mixed martial arts shows be licensed in a similar manner as professional events. Accordingly, this administrative regulation creates the same safety requirements and age restrictions and health requirements for fighters and shows as is required for professional shows. This also includes insurance requirements. These regulatory requirements are required by statute and will help protect the fighters’ safety and promote the sport. Currently, any amateur show which is taking place is not under the jurisdiction of the KBBWA and therefore is unregulated. HB 684 and this administrative regulation create a regulatory scheme for amateur mixed martial arts. An ordinary administrative regulation is not sufficient in this instance because until HB 684 becomes effective on July 15th, there is no regulatory body overseeing amateur mixed martial arts shows. HB 684 gives the KBBWA jurisdiction over amateur mixed martial arts and this administrative regulation implements the requirements for shows, participants, and promoters to help ensure the safety of the participants. The promulgation of this emergency administrative regulation will mirror the effective date of HB 684 and will make certain that the regulatory requirements are in place when the statute becomes effective. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed simultaneously with the emergency administrative regulation with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHARE, Governor
LARRY R. BOND, Acting Executive Director

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(New Emergency Administrative Regulation)

201 KAR 27:100E. General requirements for amateur mixed martial arts shows.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)

STATUTORY AUTHORITY: KRS 229.071(2), 229.091(1), 229.151(1), 229.171(1), 229.180(1)

EFFECTIVE: July 15, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) gives the Authority the sole direction, management, control, and jurisdiction over all boxing, sparring, kickboxing, mixed martial arts and wrestling shows or exhibitions to be held or conducted in the Commonwealth. KRS 229.180(1) authorizes the Authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 requires certain participants in exhibitions and shows to be licensed in accordance with eligibility requirements established by administrative regulation. KRS 229.071(2) authorizes the Authority to grant annual licenses to applicants for participation in shows and exhibitions if the Authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.071(3) grants the Authority the power to establish annual license fees for licensed individuals. KRS 229.091(1) states that every licensee is subject to administrative regulations promulgated by the Authority. This administrative regulation establishes license requirements and fees for certain participants in competitive contact sports such as boxing and mixed martial arts shows and exhibitions in the Commonwealth.

Section 1. (1) The Authority shall license all persons approved to participate as an amateur contestant in a mixed martial arts show. Applicants who have competed in a professional mixed martial arts bout shall not be licensed as an amateur and may not compete against an amateur.

(2) Participants shall apply for a passport through a licensed promoter using the "Application for Amateur MMA Passport", (CA.06).

(3) Applications shall be mailed to the Authority by the promoter within twenty-four (24) hours of issuance.

(4) Contestants over the age of thirty-nine (39) shall not be issued a passport until they have complied with Section 26 of this administrative regulation and have been approved by the Authority.

(5) The fee for the amateur passport shall be twenty-five (25) dollars.

(6) Passport renewal shall be ten (10) dollars.

(7) All amateur passports shall expire on December 31 of the year in which they are issued.

Section 2. The schedule for compensation to be paid to the following officials provided by the Authority who are participating in an amateur mixed martial arts show shall be as follows and shall be paid prior to the commencement of the main event:

(1) Judge for mixed martial arts - fifty (50) dollars.

(2) Timekeeper for mixed martial arts - fifty (50) dollars.

(3) Physician for mixed martial arts - $250.

(4) Referee for mixed martial arts - seventy-five (75) dollars.

(5) Bout Assistant for mixed martial arts - seventy-five (75) dollars.

Section 3. If a show is cancelled with less than twenty-four (24) hours notice to the Authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 4. (1) The promoter shall submit a request for a show date no less than fourteen (14) calendar days before the requested date for approval by the Authority using the "Amateur MMA Show Notice Form", 04/08.

(2) There shall be no advertising of the event prior to this approval.

(3) Upon approval by the Authority, all advertisements shall include the promoter's license number.

Section 5. (1) The proposed program for a show shall be filed with the Authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be filed immediately with the Authority.

(2) If the Authority determines, after reviewing a contestants fight history, that a proposed bout would not be reasonably competitive, the bout may be denied.

(3) Amateur mixed martial arts contestants age thirty-five (35) and over shall be in the Masters Division and shall only compete against contestants within this division.

Section 6. (1) Before the commencement of a show, all changes or substitutions shall be:

(a) Announced from the ring;

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 7. All shows shall be video taped and retained by the promoter for one (1) year. Upon request of the Authority, the promoter shall provide the tape to the Authority during this time.

Section 8. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the Authority.

(2) No alcohol or smoking shall be allowed in the areas under the control of the Authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the Authority.

Section 9. (1) There shall be an area of at least six (6) feet
between the edge of the ring floor and the first row of spectator seats on all sides of the ring.

(2) A partition, barricade, or similar divider shall be placed:
(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and
(b) Along the sides of the entry lane for contestants to enter the ring and the spectator area.

Section 10. The ring shall meet the following requirements:
(1) All bouts shall be held in a four (4) sided roped ring with the following specifications:
(a) The minimum size of the ring shall be 16 ft. x 16 ft., inside the ropes;
(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;
(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and
(d) The ring shall have steps to enter the ring on two (2) sides.
(2) The ring shall be formed of ropes with the following specifications:
(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:
   1. Twenty-four (24) inches;
   2. Thirty-six (36) inches; and
   3. Forty-eight (48) inches;
(b) A fourth rope may be used if approved by the inspector or
   commissioner of the Authority prior to the commencement of the show;
(c) A rope shall be at least one (1) inch in diameter,
   (d) A rope shall be wrapped in a clean, soft material and drawn
   taut;
(e) A rope shall be held in place with vertical straps on each of
   the four (4) sides of the ring; and
(3) A rope shall be supported by ring posts that shall be:
(a) Made of metal or other strong material;
(b) Not less than three (3) inches in diameter; and
(c) At least eighteen (18) inches from the ropes.
(4) The ring floor shall be padded or cushioned with a clean,
   soft material that:
(a) Is at least one (1) inch in thickness using slow recovery
   foam matting.
(b) Extends over the edge of the platform; and
   (c) Is covered with a single canvas or a similar material
   stretched tightly.
(5) A ring rope shall be attached to the ring posts by turn-
   buckles that are padded with a soft vertical pad at least six (6)
   inches in width.
(6)(a) A promoter may request an alternate ring design, including
   the area ring consisting of more than four (4) equal sides,
   provided that the area inside is no less than 256 square feet. This
   request shall be submitted to the executive director no less than
   thirty (30) days prior to the event.
(b) A fenced area used in a contest or exhibition of mixed mar-
   tial arts shall meet the following requirements:
   1. The fenced area shall be circular or have equal sides and
      shall be no smaller than twenty (20) feet wide and no larger
      than thirty-two (32) feet wide.
   2. The floor of the fenced area shall be padded with closed-cell
      foam, with at least a one (1) inch layer of foam padding, with a top
      covering of a single canvas, duck or similar material tightly
      stretched and laced to the platform of the fenced area. Material
      that tends to gather in lumps or ridges shall not be used.
   3. The platform of the fenced area shall not be more than six
      (6) feet above the floor of the building and shall have steps suitable
      for the use of the contestants.
   4. Fence posts shall be made of metal, shall not be more than
      six (6) inches in diameter, and shall extend from the floor of the
      building to between five (5) and seven (7) feet above the floor of
      the fenced area, and shall be properly padded.
   5. The fencing used to enclose the fenced area shall be made
      of a material that shall prevent a contestant from falling out of
      the fenced area or breaking through the fenced area onto the floor
      of the building or onto the spectators, and the fencing shall be coated
      with vinyl or a similar covering to minimize injuries to a contestant.
   6. Any metal portion of the fenced area shall be properly cov-
      ered and padded and shall not be abrasive to the unarmed comba-
      tants.
7. The fenced area shall have at least one (1) entrance.
8. There shall be no protrusion or obstruction on any part of the
   fence surrounding the area in which the contestants are to be
   competing.

Section 11. A bell or horn shall be used by the timekeeper in
indicating the time.

Section 12. In addition to the ring and ring equipment, the prom-
oter shall supply the following items, which shall be available for
use as needed.
   (1) A public address system in good working order.
   (2) Judges and timekeepers chairs elevated sufficiently to pro-
      vide an unobstructed view of the ring and the ring floor.
   (3) Items for each contestant's corner, to include:
      (a) A stool or chair;
      (b) A clean bucket;
      (c) Towels; and
      (d) Rubber gloves.
   (4) A complete set of numbered round-cards, if needed.
   (5) A clean stretcher and a clean blanket, placed under or ad-
      jacent to the ring, throughout each program.
   (6) First aid oxygen apparatus or equipment.

Section 13. A scale used for any weigh-in shall be approved in
advance by the Authority.

Section 14. A promoter shall provide a minimum of two (2)
security guards for the premises where shows are conducted to
ensure to the satisfaction of the Authority that adequate protection
against disorderly conduct has been provided. Any disorderly act,
assault, or breach of decorum on the part of any licensee at the
premises shall be prohibited.

Section 15. All emergency medical personnel and portable
medical equipment shall be stationed at ringside during the show.
There shall be resuscitation equipment, oxygen, a stretcher, a
certified ambulance, and an emergency medical technician on site
for all contests. If the ambulance is required to leave the event for
any reason, a contest shall not be allowed to continue until an
ambulance is once again present and medical personnel are at
ringside. Proof of ambulance coverage being scheduled shall be
provided to the Authority no less than two (2) business days
before the show.

Section 16. There shall be at least one (1) physician licensed
by the Authority at ringside before a bout is allowed to begin. The
physician shall have at ringside any medical supplies necessary to
provide first aid medical assistance for the type of injuries reason-
ably anticipated to occur in a mixed martial arts show.

Section 17. A promoter shall provide insurance for his contest-
tant for any injuries sustained in the mixed martial arts show. The
minimum amount of coverage per contestant shall be $5,000
health and $5,000 accidental death benefits. A certificate of insur-
cance coverage shall be provided to the Authority no less than two
(2) business days before the show.

Section 18. A promoter shall submit written notice to a local
hospital with an on-call neurosurgeon that a mixed martial arts
show is being held. This notice shall include the date, time, and
location of the show. A copy of this notice shall be filed with the
Authority no less than two (2) business days before the show.

Section 19. Judges, physicians, referees, and timekeepers
shall be selected, licensed, and assigned to each show by the
Authority. For each show, the Authority shall assign:
   (1) Three (3) judges;
   (2) One (1) timekeeper;
   (3) One (1) physician, unless more than eighteen (18) bouts
      are scheduled, in which case a minimum of two (2) physicians shall
      be required.
(4) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required; and
(5) One (1) bout assistant.

Section 20. Unless the Authority approves an exception:
(1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed five (5) rounds in duration.
(2) A championship contest of mixed martial arts shall not exceed five (5) rounds in duration.
(3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 21. Weight Classes of Contestants; Weight Loss After Weigh-in. (1) Except with the approval of the Authority, the classes for contestants competing in an amateur mixed martial arts show and the weights for each class are shown in Table A.

<table>
<thead>
<tr>
<th>CLASS</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flyweight</td>
<td>Up to 115 lbs.</td>
</tr>
<tr>
<td>Lightweight</td>
<td>116 to 125 lbs.</td>
</tr>
<tr>
<td>Super Lightweight</td>
<td>126 to 135 lbs.</td>
</tr>
<tr>
<td>Welterweight</td>
<td>136 to 147 lbs.</td>
</tr>
<tr>
<td>Middleweight</td>
<td>148 to 155 lbs.</td>
</tr>
<tr>
<td>Super Middleweight</td>
<td>156 to 174 lbs.</td>
</tr>
<tr>
<td>Light Heavyweight</td>
<td>175 to 189 lbs.</td>
</tr>
<tr>
<td>Cruiserweight</td>
<td>190 to 244 lbs.</td>
</tr>
<tr>
<td>Heavyweight</td>
<td>245 lbs.</td>
</tr>
<tr>
<td>Super Heavyweight</td>
<td>246 lbs.</td>
</tr>
</tbody>
</table>

(2) After the weigh-in of a contestant competing in an amateur mixed martial arts show:
(a) Change in weight in excess of three (3) pounds is not permitted for a contestant who weighed in at 145 pounds or less.
(b) Change in weight in excess of four (4) pounds is not permitted for a contestant who weighed in at over 145 pounds.
(3) The change in weight described in subsection (2) of this section shall not occur later than two (2) hours after the initial weigh-in.
(4) A contestant shall not be allowed to fight more than one (1) weight class above his weight.

Section 22. Glove Specifications. (1) The promoter shall supply all gloves for the event.
(2) Contestants shall wear gloves that are a minimum of six (6) oz and a maximum of eight (8) oz.
(3) Both contestants shall wear the same glove size.

Section 23. The following shall be prohibited:
(1) "Battle royal" as defined in 201 KAR 7.005, Section 1(2); and
(2) Use of excessive grease or any other substance that may handicap an opponent.

Section 24. (1) Any professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall be suspended for a period not less than one (1) year.
(2) Any promoter that allows a professional to compete against an amateur shall be suspended for period not less than one (1) year.

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

(6) All contestants shall receive a mandatory seven (7) day rest period after competing in an event with a maximum of three (3) bouts within a twenty four (24) hour period. Day one (1) of the rest period shall commence on the first day following the twenty four (24) hour period.

Section 26. A person over the age of thirty-nine (39) shall not participate as a contestant in a mixed martial arts match without first submitting to a comprehensive physical performed by a physician licensed by the Authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the Authority no later than fifteen (15) business days prior to the scheduled bout.

Section 27. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by any name other than that which appears on his license.

Section 28. A contestant shall not compete against a member of the opposite sex.

Section 29. A contestant shall not use a belt which contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 30. A mixed martial arts contestant shall:
(1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;
(2) Not wear shoes or any padding on his feet during the contest;
(3) Wear a groin protector; and
(4) Wear a mouthpiece.

Section 31. (1) The Authority may request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense.
(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the Authority may suspend or revoke the license of the contestant, or the Authority may impose a fine upon the contestant, or both.

Section 32. (1) Any contestant who has made a commitment to participate in an amateur mixed martial arts show and is unable to participate, for any reason, shall notify the promoter of the inability to participate no less than seven (7) days prior to the event.
(2) Failure to notify the promoter within the seven (7) days may result in immediate suspension pending investigation by the Authority and further disciplinary action may be taken by the Authority.

Section 33. Any mixed martial arts promoter or contestant whose license is suspended or revoked due to disciplinary actions shall be prohibited from attending all mixed martial arts events sanctioned by the Authority during the term of the suspension or revocation.
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Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:
(a) The better contestant of a round receives ten (10) points and his opponent proportionately less.
(b) If the round is even, each contestant receives ten (10) points.
(c) No fraction of points shall be given.
(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.
(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the Authority's desk.
(3) The majority opinion is conclusive and, if there is no majority, the decision is a draw.
(4) When the Authority's representative has checked the scores, he shall inform the announcer of the decision. The announcer shall then inform the audience of the decision over the speaker system.
(5) Unjudged exhibitions may be permitted with the prior approval of the Authority.

Section 35. The following moves are prohibited in amateur mixed martial arts shows:
(1) No elbow strikes to the head are allowed at any time.
(2) Knees to the head are permitted, but may only be used and delivered from a standing position.

Section 36. The following acts constitute fouls in mixed martial arts:
(1) Butting with the head;
(2) Eye gouging of any kind;
(3) Biting;
(4) Hair pulling;
(5) Fishhooking;
(6) Groin attacks of any kind;
(7) Putting a finger into any orifice or into any cut or laceration on an opponent;
(8) Small joint manipulation;
(9) Striking to the spine or the back of the head;
(10) Striking downward using the point of the elbow;
(11) Throat strikes of any kind, including grabbing the trachea;
(12) Clawing, pinching, or twisting the flesh;
(13) Grabbing the clavicle;
(14) Kicking the head of a grounded opponent;
(15) Kneeling the head of a grounded opponent;
(16) Stomping the head of a grounded opponent;
(17) Kicking to the kidney with the heel;
(18) Spiking an opponent to the canvas on his head or neck;
(19) Throwing an opponent out of the ring or fenced area;
(20) Holding the shorts of an opponent;
(21) Spitting at an opponent;
(22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent;
(23) Holding the ropes or the fence;
(24) Using abusive language in the ring or fenced area;
(25) Attacking an opponent on or during the break;
(26) Attacking an opponent who is under the care of the referee;
(27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;
(28) Flagrantly disregarding the instructions of the referee;
(29) Timidity, including avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury;
(30) Interference by the corner; or
(31) The throwing by a contestant's corner staff of objects into the ring during competition.

Section 37. (1) If a contestant fouls his opponent during an amateur mixed martial arts show, the referee may penalize him by deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.
(2) When the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.
(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.
(4) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

Section 38. (1)(a) If a bout of amateur mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the contestant who has been fouled is able to continue or not.
(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout continued after a recoupative interval of not more than five (5) minutes.
(c) Immediately after separating the contestants, the referee shall inform the Authority's representative of his determination that the foul was accidental.
(2) If the referee determines that a bout of amateur mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout shall be declared a no contest if the foul occurs during:
(a) The first two (2) rounds of a bout that is scheduled for three (3) rounds or less; or
(b) The first three (3) rounds of a bout that is scheduled for more than three (3) rounds.
(3) If an accidental foul renders a contestant unable to continue the bout, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:
(a) The completed second round of a bout that is scheduled for three (3) rounds or less; or
(b) The completed third round of a bout that is scheduled for more than three (3) rounds, the outcome shall be determined by scoring the completed rounds.
(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout.
(5) Any contestant committing a foul may be issued a violation by the inspector or employee of the Authority.

Section 39. A contest of amateur mixed martial arts may end in the following ways:
(1) Submission by:
(a) Physical tap out; or
(b) Verbal tap out.
(2) Technical knockout by the referee or physician stopping the contest.
(3) Decision via the scorecards, including:
(a) Unanimous decision;
(b) Split decision;
(c) Majority decision;
(d) Draw, including:
1. Unanimous draw;
2. Majority draw; or
3. Split draw;
(4) Technical decision;
(5) Technical draw;
(6) Disqualification;
(7) Forfeit; or
(8) No contest.

Section 40. Promoter Requirements upon Conclusion of the Show. (1) Within twenty-four (24) hours of the conclusion of an event, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the Authority the form "Amateur MMA Event Report", 04/08.
(2) Within twelve (12) hours of the conclusion of the event, the
promoter shall:
(a) Submit the results from the amateur MMA event to the Authority;
(b) Shall ensure the passport of each contestant has been completed upon conclusion of the event.

Section 41. The following requirements apply to all bouts between female contestants:
(1) A contestant shall not wear facial cosmetics during the bout;
(2) A contestant with long hair shall secure her hair with soft and nonabrasive material;
(3) Weight classes shall be those established in section 21;
(4) A contestant shall wear a properly-fitted:
(a) Breast protector;
(b) Groin protector; and
(c) Mouthpiece;
(5) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout. These results must be submitted to the Authority no less than twenty-four (24) hours prior to the show.

Section 42. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Amateur MMA Passport", 4/08;
(b) "Amateur MMA Show Notice Form", 4/08; and
(c) "Amateur MMA Event Report", 4/08.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY R. BOND, Acting Executive Director
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 23, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Larry Bond, Kentucky Boxing and Wrestling Authority, 500 Maro Street, Capital Plaza Tower, 8th Floor, Office 601, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3869.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry R. Bond
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth detailed rules governing the conduct of amateur mixed martial arts shows or exhibitions.
(b) The necessity of this administrative regulation: This regulation is necessary to ensure that amateur mixed martial arts shows and exhibitions in the Commonwealth of Kentucky are run in such a manner to protect the contestants and to establish uniform rules for the sport.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority's jurisdiction, as well as to provide the professional staff necessary to properly regulate those events.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation consists in detail the rules governing the conduct of contestants at amateur mixed martial arts shows or exhibitions taking place in the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statute: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed athletes who participate in amateur mixed martial arts events, licensees who promote or manage the shows and exhibitions, and the officials who regulate those events will be impacted by this administrative regulation.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The contestants must apply for their passport, the promoters must obtain a surety bond and apply to be licensed as a promoter in the Commonwealth and the officials must obtain a license to officiate during an amateur show or exhibition.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only cost for the contestants and officials will be for license. The cost for the promoters will be no different than the compliance with professional regulations, which include cost for license, insurance coverage, medical equipment and personnel.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will protect the athletes competing in the matches by, for the first time, establishing uniform rules for competition and most importantly requiring medical personnel and equipment to be on site during a match in the event of injury, and to require insurance to compensate participants who may be injured while competing in a bout. Thus the overriding benefit of this regulation is safety and welfare.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Minimal, no new personnel will need to be hired. The regulatory framework is already in place due to the regulation of professional MMA.
(b) On a continuing basis: Minimal, see above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the licensure fees paid by the regulated community.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding will be required to implement this administrative regulation, the program will be paid for by the license fees as are the other KBB programs.
(8) State whether not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation creates an application and renewal fee for amateur MMA contestants.
(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, as there is no reason to discriminate among amateur mixed martial arts participants as a class.

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?
STATEMENT OF EMERGENCY

202 KAR 7:330E

This emergency administrative regulation promulgates the administrative regulation relating to the requirements for examination, certification and recertification of the intermediate level of emergency medical technicians, known as advanced emergency medical technicians. To date, there does not exist any such regulation for this level of certification although there are students who have completed their training for the certification of advanced emergency medical technicians through a pilot program established pursuant to 202 KAR 7:010, Section 13, and have obtained their credentials through National Registry but are unable to practice due to a lack of a state credentialing process. Without the promulgation of this administrative regulation establishing the requirements and guidelines for these individuals trained at this intermediate level there is risk of substantial harm to the public health, safety, or welfare of the citizens of the Commonwealth. It has been determined that an emergency exists because there are individuals trained through a pilot program as advanced emergency medical technicians but have no requirements or guidelines for their service established through an administrative regulation. The immediate enactment of this regulation is imperative to the protection of the health, safety, and welfare of the citizenry necessitating pre-hospital care in Kentucky. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BRESHEAR, Governor
JUDGE ROB ROTHENBURGER, Chairperson

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(New Emergency Administrative Regulation)

202 KAR 7:330E. Requirements for examination, certification and recertification of the advanced emergency medical technician.

RELATES TO: KRS 311A.010, 311A.025, 311A.027, 311A.050, 311A.055, 311A.060, 311A.065, 311A.075, 311A.090, 311A.095, 311A.100, KRS 311A.110, KRS 311A.145

STATUTORY AUTHORITY: KRS 311A.020, KRS 311A.025, KRS 311A.030

EFFECTIVE DATE: July 11, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to Advanced Emergency Medical Technicians. This administrative regulation establishes requirements for examination, certification, and recertification of the intermediate level of emergency medical technicians, also known as "AEMT".

Section 1. Student Eligibility. Individuals shall be eligible to enroll as a student in an AEMT training program if the applicant:

(1) Is at least eighteen (18) years of age;

(2) Holds a current unrestricted certification as a Nationally Registered Emergency Medical Technician-Basic or unrestricted certification as a Kentucky Emergency Medical Technician- Basic;

(3) Holds a college degree, high school diploma, GED, or equivalent;

(4) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(5) Is not subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(6) Meets any additional requirements established by the EMS-TE; and

(7) Holds a valid motor vehicle operators license from a state or territory in the United States.

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an AEMT shall:

(a) Meet all of the requirements of Section 1 of this administrative regulation;

(b) Successfully complete a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technician as the curriculum for education;

(c) Obtain National Registry of Emergency Medical Technicians registration as a Registered EMT Intermediate/85, Registered EMT Intermediate/99, or Registered Advanced Emergency Medical Technician;

(d) Submit a signed "Application for Advanced Emergency Medical Technician Initial Certification";

(e) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Pay the fee required by 202 KAR 7:030; and

(g) Present written evidence of completion of current training in cardiopulmonary resuscitation that shall:

1. Be taught by an individual who holds one (1) of the following instructor certification approved by the board at an appropriate level from:
   - The American Red Cross;
   - The American Heart Association;
   - The National Safety Council;
   - The American Health and Safety Institute; or
   - Another board approved organization.

2. The course shall provide instruction and testing in:
   - A. One (1) rescuer cardiopulmonary resuscitation;
   - B. Two (2) rescuer cardiopulmonary resuscitation;
   - C. Techniques of changing from one (1) to two (2) rescuers during the performance of cardiopulmonary resuscitation;
   - D. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;
   - E. Techniques for relief of obstruction of the airway;
   - F. Cardiopulmonary resuscitation of infants and small children;
   - G. Barrier-to-mouth, barrier-to-nose, or barrier-to-stoma resuscitation for adults, small children, and infants;
   - H. Use of oral and nasal airways;
   - I. Use of bag-valve-mask or other ventilation device;
   - J. Use of supplemental oxygen; and
   - K. Use and operation of an AED.

(2) An applicant for certification as an Advanced Emergency Medical Technician shall successfully complete all National Registry testing and become Kentucky-certified within two (2) years after the completion date of their AEMT course.

Section 3. Expiration of Certification. (1) Initial certification periods shall be for a minimum of twelve (12) but shall not exceed twenty-four (24) months.

(2) Subsequent recertification shall be for twenty-four (24) months and shall expire on December 31 of subsequent recertification cycles.

(3) Upon expiration of certification, an AEMT shall not practice as an AEMT or perform a procedure authorized for a certified AEMT, or hold themselves out to be an AEMT, in accordance with KRS 311A.050.
Section 4. Recertification and Continuing Education Requirements. (1) A Kentucky-certified AEMT shall be eligible for recertification if the applicant submits to the Board:
(a) A signed "Universal Application for Renewal";
(b) Written evidence of completion of training in cardiopulmonary resuscitation meeting the requirements as outlined in Section 2 of this administrative regulation;
(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110; and
(d) The fee established in 202 KAR 7:030.
(2) The applicant shall maintain evidence of either:
(a) Current registration by the National Registry of Emergency Medical Technicians as an AEMT, EMT-Intermediate/DS or EMT Intermediate/99; or
(b) Successful completion of the AEMT continuing education requirement that includes forty-eight (48) total contact hours of which twelve (12) hours may be in subject areas chosen by the AEMT and the remaining thirty-six (36) hours shall include the following minimum contact hours and topics:
   1. Five (5) hours in preparatory;
   2. Five (5) hours in airway management and ventilation;
   3. Twelve (12) hours in medical, including cardiology;
   4. Eight (8) hours in trauma;
   5. Four (4) hours in special considerations; and
   6. Two (2) hours in operations.
(3) The training shall be validated by:
(a) The medical director, training officer, course coordinator, or provider of the continuing education offering; or
(b) A medical director, service director, or training officer of the AEMT’s ambulance service, first response agency, fire department, rescue squad or other medical employer.
(4) An application for renewal of certification shall be denied if:
(a) Prior to the certification expiration date, the AEMT applicant has not met the applicable requirements of this section; or
(b) The applicant has been subjected to disciplinary action that prevents recertification at the time of application.
(5) A certified AEMT, in good standing, who is a member of any branch of the United States military or a National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 U.S.C. 121 and 673b may be given an extension for a period up to one (1) year after release from active duty to meet the applicable requirements for recertification listed in this administrative regulation. The AEMT shall submit a written request for this extension within sixty (60) days of release of active duty
(6) The KBEMS office may audit an AEMT’s continuing education and continuing education records.
(7) The AEMT shall maintain documentation of all continuing education for four (4) years from the date of completion.

Section 5. AEMT Reciprocity. (1) A person certified in another state or territory of the United States or member of the United States military who is registered by the NREMT as an Advanced EMT shall be eligible for direct reciprocity for initial Kentucky certification as an AEMT if the individual:
(a) Is at least eighteen (18) years of age;
(b) Holds current unrestricted registration as a NREMT-B;
(c) Has successfully completed a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1995 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technician as the curriculum for education, which shall not be satisfied by the completion of refresher or transition courses alone;
(d) Holds a college degree, high school diploma, GED or equivalent; and
(e) Holds a valid motor vehicle operator’s license from a state or territory in the United States.
(2) The individual shall:
(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;
(b) Submit a completed and signed "Advanced Emergency Medical Technician Initial Certification Application";
(c) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(d) Present written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
(e) Pay the fee required by 202 KAR 7:030;
(f) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense;
(g) Not have been subjected to discipline that would prevent reciprocity at the time of application; and
(h) Have successfully completed a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technician as the curriculum for education.

Section 6. Exemptions from AEMT Administrative Regulations. Certification requirements for an AEMT shall not apply to:
(1) United States military personnel or state National Guard or employees of the United States government while providing services provided by the United States government, while engaged in the performance of their official duties under federal law or while providing assistance in mass casualty or disaster type situation; or
(2) An AEMT certified in another state or territory of the United States who:
(a) Comes into Kentucky to transport a patient from another state into Kentucky; or
(b) Is transporting a patient from an out-of-state location through the state of Kentucky to an out-of-Kentucky location.

Section 7. Reinstatement of Certification. (1) An AEMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting:
(a) A completed and signed "Advanced Emergency Medical Technician Certification Reinstatement Application";
(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;
(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(d) Payment of the fee established in 202 KAR 7:030;
(e) Evidence of previous certification as an AEMT in Kentucky;
(f) Evidence of successful completion within twelve (12) months preceding their application for reinstatement of the AEMT continuing education requirement that includes forty-eight (48) total contact hours of which twelve (12) hours may be in subject areas chosen by the AEMT and the remaining thirty-six (36) hours shall include the following minimum contact hours and topics:
   1. Five (5) hours in preparatory;
   2. Five (5) hours in airway management and ventilation;
   3. Twelve (12) hours in medical, including cardiology;
   4. Eight (8) hours in trauma;
   5. Four (4) hours in special considerations; and
   6. Two (2) hours in operations; and
(g) Evidence of validation of skills maintenance by completing the "Advanced EMT Recertification Report".
(2) An AEMT, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.
(3) An application for reinstatement of certification shall not be considered if:
(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;
(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or
(c) The applicant has been subjected to discipline that would
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prevent reinstatement at the time of application.

Section 8. Public Notice of Negative Action. The KBEMS office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate the name of an AEMT that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.

Section 9. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:
(a) Submits a completed "Application for Temporary Certificate);
(b) is at least eighteen (18) years of age;
(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;
(d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NFEMT as an AEMT, EMT-Intermediate/86, or EMT-Intermediate/99;
(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
(g) Pays the fee required by 202 KAR 7.030;
(h) Provides the board with a copy of a state wide criminal background check from their state of residence;
(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and
(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.

Section 10. Effective Date. This administrative regulation shall become effective immediately upon passage for those individuals that have completed a board approved Advanced EMT pro gram and whom meet the requirements of Section 2 of this administrative regulation. The regulation shall become effective without restriction on January 31, 2008, absent further action by the board.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference by:
(b) The United States Department of Transportation, National Highway Traffic Administration, "Scope of Practice Model based curriculum for Advanced Emergency Medical Technician", February 2007;
(c) The "Application for Advanced Emergency Medical Technician Initial Certification", July 2008,
(d) The "Universal Application for Renewal", July 2008;
(e) The "Kentucky Board of Emergency Medical Services AEMT Minimum Continuing Education Requirements, Total Contact Hours", July 2008;
(f) The "Advanced Emergency Medical Technician Certification Reinstatement Application", July 2008; and

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, KCTCS, 300 N. Main Street, Versailles, Kentucky 40383, Monday through Friday, 8 a.m. to 4:30 p.m.

ROB ROTHENBURGER, Judge, Chairman

APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 11, 2008 at 1 p.m.
CONTACT PERSON: Lee W. Rowland, Esq., Legal Counsel, Kentucky Board of Emergency Medical Services, 300 N. Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee W. Rowland, Esq.

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes requirements and procedures for certification, recertification, and reciprocity for advanced emergency medical technicians by the Kentucky Board of Emergency Medical Services.
(b) The necessity of this administrative regulation: This regulation is necessary to conform within the requirements of KRS 311A.025, which provides for the board to promulgate administrative regulations for any certification that shall, at a minimum, address the eligibility and requirements for students, training, certification, recertification, and reciprocity for the created level of certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.025 provides for the establishment of requirements and procedures for certification, recertification and reciprocity for the created level of certification.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes the requirements and procedures for certification, recertification, and reciprocity for advanced emergency medical technicians.
(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 effect the requirements and procedures for an estimated 50 advanced emergency medical technicians over the first 2 years from enactment of this regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The advanced emergency medical technicians will be required to comply with the applicable provisions of this regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The advanced emergency medical technicians will be required to comply with the application fee and costs as provided in 202 KAR 7.030.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will be certified as advanced emergency medical technicians.
(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: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in existing fees or funding will be necessary to implement this regulation. However, fees for certification and recertification will be created by the board in this discipline did not previously exist in the
board structure.

(9) Tiering: Is tiering applied? Tiering is not applicable since this regulation establishes requirements and procedures for advanced emergency medical technicians only.

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)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? N/A

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. N/A

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(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 (+/-): N/A
Expenditures (+/-): N/A
Other Expenditures (+/-): N/A

STATEMENT OF EMERGENCY

502 KAR 15:010E

On July 15, 2008 the amendment to KRS 189.635 comes into effect allowing the Department of Kentucky State Police to establish a fee schedule for providing vehicle accident reports to parties entitled to obtain them, expanding the parties entitled to obtain the reports to include parties involved in litigation and written designees of insurance companies and to allow the Department of Kentucky State Police to contract with outside vendors that maintain used car history databases to provide limited information as a consumer protection mechanism. An ordinary administrative regulation is not sufficient because the new statute comes into effect on July 15, 2008. An emergency regulation is necessary to establish the fee schedule per statute. With the records exempt from the Open Records Act the Department of Kentucky State Police will be unable to provide the vehicle accident reports. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2008.

STEVE BESHEAR, Governor
RODNEY BREWER, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Division of Technical Services
(Emergency Amendment)

502 KAR 15:010E. Accident reports.

RELATES TO: KRS 189.635

STATUTORY AUTHORITY: KRS 15A.160, 189.635

EFFECTIVE: July 15, 2008

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2002-03, effective December 16, 2003, reorganized the Justice Cabinet and placed the Department of State Police under the Justice and Public Safety Cabinet; KRS 189.635 requires the Department of Kentucky State Police (Justice and Public Safety Cabinet) to establish a reporting system for all vehicle accidents, including reporting procedures, fee schedule and forms. This administrative regulation establishes the reporting system and fee schedule.

Section 1. The "Uniform Police Traffic Accident Report" form published by the Department of Kentucky State Police [Justice and Public Safety Cabinet] shall be the official vehicle accident report form for all law enforcement agencies in Kentucky.


Section 3. A law enforcement agency whose officers make a traffic accident report under this or a traffic accident shall be deemed an originating agency with respect to the report and shall retain a copy of the report. Responsibility for providing copies of traffic accident reports to the parties authorized by statute shall remain with the originating agency.

Section 4. A law enforcement agency receiving a vehicle accident report pursuant to KRS 189.635 shall [within ten (10)-days thereof] forward the original copy of the report to the "CRASH Section, Criminal Identification and Records Branch" Department of Kentucky State Police, Justice and Public Safety Cabinet, Frankfort, Kentucky 40601, in envelopes provided by the cabinet within ten (10) days of receiving the report. The report shall be mailed flat and not folded.

Section 5. Fees for Vehicle Accident Reports. (1) Vehicle Accident Reports may be obtained by authorized parties pursuant to KRS 189.635 upon payment of the following fees:
(a) Paper copies: five (5) dollars; and
(b) Reports obtained via the Kentucky State Police Web site: five (5) dollars.

Section 6[-] Incorporation by Reference. (1) The following materials is incorporated by reference:
(a) "Kentucky Uniform Police Traffic Collision Report, Form KSP 74, Revised 1/2000;"
(b) "Kentucky Uniform Police Traffic Accident Report Manual, July 2000;"
(c) "Manual on Classification of Motor Vehicle Traffic Accidents, 6th edition;" and
(d) "Vehicle accident report envelope, 1st edition."
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Headquarters, 919 Versailles Rd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner
APPROVED BY AGENCY: July 15, 2008
FILED WITH LRC: July 15, 2008 at 9 a.m.
CONTACT PERSON: Kentucky State Police, Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(a) Provide a brief summary of:
(1) What this administrative regulation does: This administra-
ative regulation establishes the procedures and fees for obtaining a vehicle accident report in paper form and online.

(b) The necessity of this administrative regulation: To establish a fee schedule for obtaining vehicle accident reports in paper form and online and to clarify that only parties authorized by statute are entitled to the vehicle accident reports.

(c) How this administrative regulation conforms to the content of the authorizing statutes: See answer to (1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See answer to (1)(b).

(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: See answer to (1)(b).

(b) The necessity of the amendment to this administrative regulation: The 2008 GA enacted a new section of KRS 189.635 that comes into effect July 15, 2008. This regulation implements the fees and designates the parties entitled to receive the reports.

(c) How the amendment conforms to the content of the authorizing statutes: See answer to (1)(b).

(d) How the amendment will assist in the effective administration of the statutes: See answer to (1)(b).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons statutorily entitled to obtain vehicle accident reports. This includes insurance companies and written designees, attorneys, persons involved in a vehicle accident, parents, and parties to litigation.

(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: Pay $5 per paper copy for the vehicle accident report or $10 to purchase online.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): See answer to (4)(a).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More expedient service in obtaining vehicle accident reports online.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment establishes fees for obtaining the reports.

(7) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. See answer to (4)(a).

(8) TIERING: Is tiering applied? Tiering was not applied because all persons eligible to receive a vehicle accident report 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? Kentucky State Police.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 189.635

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? Approximately $500,000.

(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? Revenue all goes to Kentucky State Police.

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

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

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

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

STATEMENT OF EMERGENCY
502 KAR 32:010E

On July 1, 2008 the amendment to KRS 17.175 comes into effect requiring the collection of DNA samples from all persons currently incarcerated for felony convictions, all sex offenders and juveniles age thirteen and over convicted of a violent felony. The current administrative regulation requires that DNA samples be blood samples drawn by medical personnel. New technology allows for other types of biological samples that can be extracted by properly trained persons with no medical background to yield viable DNA specimens. The Department of Corrections estimates that it will need to collect 60,000 samples to comply with the statute. Allowing for different collection methods will limit costs and remove the burden from medical personnel. This administrative regulation allows for authorized personnel to collect biological samples from current felons, sex offenders and juveniles convicted of a violent felony. An ordinary administrative regulation is not sufficient because the new statute comes into effect on July 1, 2008. An emergency administrative regulation is necessary to implement the above procedures to reduce costs and allow for more rapid collection of a large felony population. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 1, 2008.

STEVE BESHARE, Governor
RODNEY BRIEWER, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Forensic Laboratory
(Emergency Amendment)

502 KAR 32:010E. Centralized database for DNA Identification records.

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.170, 17.175, 10 U.S.C. 1555
EFFECTIVE: July 1, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.175 requires the Kentucky State Police to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples

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included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Authorized personnel" means a person who has completed the Department of Kentucky State Police approved training for collecting DNA. (2) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone. (3) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile. (4) "BLU" means the Department of Juvenile Justice. (5) "DNA" means desoxyribonucleic acid. (6) "DNA database" means the database that is part of the federal Combined DNA Index System maintained by the Kentucky State Police under agreement with the Federal Bureau of Investigations and [which] contains the DNA profiles for qualifying offenders, crime scene specimens, unidentified human remains, missing persons, and close relatives of missing persons as authorized by KRS 17.175. (7) "DNA profile" means a set of DNA identification characteristics which permit the DNA of one (1) person to be distinguishable from that of another person. (8) "DNA sample" means a biological sample collected for DNA identification purposes. (9) "DNA sample supernatant" means a person designated as the point of contact with the Federal Bureau of Investigations to insure the proper operation and security of the database. (10) "DOC" means the Department of Corrections. (11) "Evidence Item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted. (12) "FBI" means the Federal Bureau of Investigation. (13) "KSP" means the Kentucky State Police. (14) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory. (15) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a DNA sample from a qualifying offender by either a mucosal swab, blood, or body fluid sample. (16) "Qualifying offender" means a person who has committed one (1) or more of the crimes listed in KRS 17.170 - 17.174.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) In accordance with KRS 17.170(2), DNA samples shall be collected by DOC and DLU from [qualifying offenders in a medically approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist]. (2) In accordance with KRS 17.170(2), KSP Central Lab shall provide offender DNA collection kits to DOC and DLU for the collection of DNA samples. Each offender DNA collection kit shall contain either a mucosal swab, blood, or body fluid sample. Each offender DNA collection kit shall be stored in a pre addressed, sealed mailing container. (3) Each offender DNA collection kit for the collection of a blood sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)" (KSP Form No. 47-A) or "Offender DNA Collection Kit Information Sheet (finger prick lancet method)" (KSP Form No. 47-B). The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the DNA sample. (4) The qualifying offender's left and right thumbprints shall be taken when the sample is collected, except in the instance of amputation or injury to the qualifying offender's thumbs in which case the other digit shall be oriented per the instructions on the Offender DNA Collection Kit Information Sheet. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the DNA sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender. The DNA sample shall be taken by DOC or DLU authorized personnel and not self-collected by the qualifying offender. (5) Following immediate collection, the DNA sample shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail. (6) Section 3. Collection of Missing Person DNA Samples For Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request for Examination," KSP Form No. 26. (2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a DNA sample shall be submitted from children of the missing person and the children's other parent may also be submitted. (3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established. (4) Section 4. Collection of DNA Samples From Unidentified Bodies For Inclusion In DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26. (2) If practical, the biological sample shall be a blood sample, a deep tissue sample, or a bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-mentioned samples cannot be submitted. (3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established. (5) Section 5. Collection of DNA Samples From Crime Scenes For Inclusion In DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to the KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26. (2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established. (6) Section 6. Quality Assurance Standards for DNA Database. (1) The proficiency of examiners conducting DNA analyses for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(2) (H)). (2) Only DNA profiles obtained as a result of DNA analysis shall be entered in the DNA database [conducted in accordance with the quality assurance standards set forth in the KSP Forensic Laboratory's "Forensic Biology/DNA Database Quality Assurance Manual."]

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

(2) DNA database shall only be accessed as approved by the DNA Database Supervisor by Kentucky State Police employees who show proficiency in DNA testing and the DNA database, maintain continuing education hours pursuant to KSP Forensic Lab Policy and Federal requirements. The DNA Database Supervisor may provide KSP interns with limited access to the DNA database pursuant to KSP Forensic Lab policy.

(3) All data and information generated by the DNA Database are confidential.

(4) Searches shall be conducted for law enforcement, criminal justice agencies or governmental forensic science laboratories approved by the DNA Database Supervisor pursuant to federal guidelines.

(5) Access to the DNA Database shall be through computers that are utilized solely for accessing the DNA Database by authorized users and are located in areas secured by the Kentucky State Police (security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories' DNA Database Manual).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Offender DNA Sample Information Sheet (blood tube method)," KSP Form No. 47, May 2003.
(b) "Offender DNA Collection Kit Information Sheet (finger stick lancet method) KSP Form No. 47-A, January 2006.
(c) "Offender Request For Evidence Examination," KSP Form No. 47, March 2001.
(d) "Offender DNA Sample Information Sheet (blood tube method)," KSP Form No. 47, May 2003.
(g) "Offender DNA Collection Training Program for Trainers," KSP Form No. 139, June 2008.
(h) "Offender DNA Collection Training Program for Collectors," KSP Form No. 140, June 2008.
(i) "Offender DNA Collection Training Program," KSP Form No. 141, June 2008.

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

RODNEY BREWER, COMMISSIONER
APPROVED BY AGENCY: June 27, 2008
FILED WITH LRC: July 1, 2008 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends the procedures for collecting specimens and adding them to the centralized DNA database for the Commonwealth of Kentucky and delineates the procedures for maintaining the database. This regulation also removes internal policy manuals from the regulation because these manuals do not directly impact the subject matter of the regulation or any aspect that will affect the public but dictate the operation of the database.

(b) The necessity of this administrative regulation: The 2008 General Assembly amended DNA collection necessitating the changes in the regulation with an emergency clause making the statute effective July 1, 2008.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It clarifies that biological DNA samples may be collected by the Department of Juvenile Justice, Probation and Parole; and Department of Corrections. Allows persons other than medical personnel to collect biological samples less invasive means than drawing blood samples. It also provides for collecting samples from all felons currently incarcerated and all sex offenders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It allows the Kentucky State Police to accept biological DNA samples other than blood; provides for collecting samples from all felons and sex offenders; and allows properly trained authorized personnel to collect the samples.

(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: Allows Department of Juvenile Justice; Probation and Parole; and Department of Corrections to collect biological samples from all felons in custody and sex offenders by means other than drawn blood. Provides for authorized personnel to collect the biological DNA samples.

(b) The necessity of the amendment to this administrative regulation: KRS 17.175 was amended by the 2008 General Assembly with an emergency clause making it effective July 1, 2008.

(c) How the amendment conforms to the content of the authorizing statutes: See answer (2)(a) to this section.

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

(3) List the type and number of individuals, businesses, organizations, or state and federal governments affected by this administrative regulation: Kentucky State Police; Juvenile Justice; Probation and Parole; and Department of Corrections.

(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: Personnel will be trained by the Kentucky State Police and all DNA collection kits will be paid for and provided by the Kentucky State Police. The entities will be required to identify personnel who will be trained to collect the biological DNA samples.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Marginal costs to other agencies as they will only be required to pay personnel to receive training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Rapid identification of criminal suspects allowing law enforcement to initiate an investigation through entering pertinent information into the DNA database. Identification in the DNA database is NOT sufficient evidence alone to sustain a conviction for a crime.

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

(a) Initially;

(b) On a continuing basis;

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and Federal Grants?

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all felons and sex offenders are treated identically.

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 Police; Juvenile Justice; Probation and Parole; Department of Corrections.
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Police; Department of Juvenile Justice; Probation and Parole; and Department of Corrections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 10 U.S.C. 1565; 42 U.S.C. 14131,14192.

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? Appx. $1,279,260

(d) How much will it cost to administer this program for subsequent years? Appx. $391,695

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
702 KAR 7:130E

2008 HB 406, which was passed during the legislative session of 2008, requires the Kentucky Board of Education to promulgate a regulation for uniform procedures for approval of alternative, innovative school calendars by the Commissioner of Education, effective immediately. Approval by the Kentucky Board of Education of an emergency regulation is necessary to enable the Commissioner of Education and the Kentucky Department of Education to immediately provide a process and technical assistance for approval of alternative, innovative school calendars to local school districts prior to the beginning of the 2008-09 school year consistent with the intent of HB 406. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN R. BESHEAR, Governor
JON E. DRAUD, Commissioner

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(New Emergency Administrative Regulation)

702 KAR 7:130E. Approval of Innovative Alternative School Calendars.


EFFECTIVE DATE: June 18, 2008

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky. Acts ch., Part I, D, 4, (14) requires the Kentucky Board of Education to establish by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars.

Section 1. (1) A local board of education may request approval of an innovative alternative school calendar for the 2008-2009 school year or the 2009-2010 school year by submitting a written request to the Commissioner of Education.

(2) The request shall be signed by the superintendent and board of education chairperson, contain a specific explanation of the reason for the request, and shall include the following information:

(a) How the alternative calendar will improve teaching and learning in the district;

(b) How 1,082 hours of instruction will be included in the calendar;

(c) The structure of any instructional days that are less than six hours in length; and

(d) A description of how the alternative calendar will provide for professional learning situations designed to improve instructional practices that will enhance student learning.

Section 2. A request for approval of an innovative alternative school calendar shall be submitted to the Commissioner of Education no later than June 30 preceding the school year for which the request is submitted.

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).

JON E. DRAUD, Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 16, 2008 at 4 p.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner, Kentucky Department of Education, 500 Meri Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-8321.

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 allows the Kentucky Department of Education to immediately provide technical assistance and approval of school calendars to local school districts prior to the beginning of the 2008-09 school year, consistent with the intent of HB 406.

(b) The necessity of this administrative regulation: This emergency administrative regulation was necessary to implement the provisions of 2008 HB 405/EN, Part I, D, 4 (14) to enable the Kentucky Department of Education to immediately provide technical assistance and approval of school calendars to local school districts prior to the beginning of the 2008-09 school year.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the required process and guidelines to allow the Commissioner of Education to approve innovative, innovative school calendars prior to the beginning of the 2008-09 school year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The emergency regulation provides the required process and guidelines for local school districts to apply for and receive approval of innovative, alternative school calendars effective for the 2008-2009 school year.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statute: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendent, school boards and staff in the Kentucky Department of Education, Office of District Support 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: The local school districts that submit an application for
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

STATEMENT OF EMERGENCY
803 KAR 25:089E

The Department of Workers’ Claims must amend this administrative regulation by adopting a rule to comply with KRS 342.035(1) which requires that the schedule of fees be reviewed and updated, if appropriate, every two (2) years on July 1. Medical costs in the workers’ compensation system shall be fair, current, and reasonable for similar treatment in the same community where paid for by general insurers. The medical fee schedule meets this statutory guideline. By complying with that statutory guideline, the medical fee schedule update insures injured employees receive quality and appropriate health care and medical providers are appropriately compensated. This emergency regulation complies with the statutory mandate of being in place by July 1 and protects human health and public health, safety, and welfare by updating medical costs. Our current administrative regulation incorporates the 2005 fee schedule which is three (3) years old and insufficient. Because the medical fee schedule is updated pursuant to KRS 342.035(1), the current administrative regulation must be amended to incorporate the new schedule. This emergency regulation will be replaced by an ordinary administrative regulation.

LABOR CABINET
Department of Workers’ Claims
(Emergency Amendment)

803 KAR 25:089E. Workers’ compensation medical fee schedule for physicians.

RELATES TO: KRS 342.019, 342.020, 342.035
STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)
EFFECTIVE DATE: July 1, 2008

NATURE, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the Commissioner of the Department of Workers’ Claims to promulgate administrative regulations to establish that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons that are the same in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the Commissioner to promulgate an administrative regulation establishing the workers’ compensation medical fee schedule for physicians. A schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) “Medical fee schedule” means the Workers’ Compensation Medical Fee Schedule for Physicians.

(2) “Physician” is defined by KRS 342.0011(32).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers’ Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the Commissioner pursuant to 803 KAR 25.110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor and [1]

(2) The resulting fee shall be the maximum fee allowed for the service provided.

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Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Preventon Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, at 8:00 a.m. to 4:30 p.m.

Dwight T. Lovan, Commissioner
APPROVED BY AGENCY: June 25, 2008
FILED BY LRC: July 1, 2008 at 9 a.m.
CONTACT PERSON: Carla H. Montgomery, General Counsel; Department of Worker's Claims, Preventon Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.
(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change existing administrative regulation: The medical fee schedule has been updated and will be incorporated by reference.
(b) The necessity of the amendment to this administrative regulation: The statute requires the schedules to be updated every two (2) years, if appropriate.
(c) How the amendment conforms to the content of the authorizing statutes: The medical fee schedule has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.
(d) How the amendment will assist in the effective administration of the statutes: The updated fee schedule assists the workers' compensation program by updated fees for physicians to insure injured workers get qualified and appropriate medical treatment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employees, third party administrators.
(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: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new medical fee schedule to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for $70 or the disk for $35.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The contract for reviewing and updating the physician's fee schedule and all fee schedules is $103,400.
(b) On a continuing basis: No continuing costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding to implement this administrative regulation.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation sets forth an updated medical fee schedule for physicians. Some fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.
(f) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties 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? All parts of government with employees
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue generated.
(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 is generated.
(c) How much will it cost to administer this program for the first year? No new administration costs.
(d) How much will it cost to administer this program for subsequent years? No new administration costs.

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

Revenues (+/-):
Expenditures (+/-):
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

STATEMENT OF EMERGENCY
803 KAR 25:091E

The Department of Workers’ Claims must amend this administrative regulation by emergency to comply with KRS 342.035(1) which requires that the schedule of fees be reviewed and updated, if appropriate, every two (2) years on July 1. A fee schedule shall be limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. This emergency regulation complies with the statutory mandate in KRS 342.035(1) and protects human health and public health, safety, and welfare. Our current administrative regulation needs immediate clarification and updates to correspond with the filing of the physicians fee schedule in 803 KAR 25:09. The updates to that fee schedule render the current regulation insufficient, and it is imperative for it to be updated. This administrative emergency regulation will be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
DWIGHT T. LOVAN, Commissioner

LABOR CABINET
Department of Workers’ Claims
(Emergency Amendment)

803 KAR 25:091E. Workers’ compensation hospital fee schedule.

RELATES TO: KRS 342.020, 342.035, 342.315
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260
EFFECTIVE DATE: July 1, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner (Executive-Director) of the Department[Office] of Workers’ Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. This administrative regulation regulates hospital fees for services and supplies provided to workers’ compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Durable medical equipment (DME)" means equipment that withstands repeated use and is used primarily to serve a definitive medical purpose.
(2) "Hospital" means a facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty which is licensed pursuant to KRS 2168.105.
(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.
(4) "Implant" means an object or material inserted or grafted into the body for prosthetic, therapeutic, diagnostic, or experimental purposes.
(5) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Workers’ Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.
(6) "Unbundling" means the practice of submitting separate bills for services to a payor pursuant to this administrative regulation which are billed to payers other than pursuant to this administrative regulation on a global basis.
(7) "Global basis" means the practice of submitting a bill for two or more services as one (1) item.
(8) "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers’ compensation patient hospital fees for each hospital for each compensable service or supply provided on or after the effective date of this administrative regulation.

Section 3. Calculation of Hospital’s Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) A hospital’s base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Department of Health Services, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 on file as of October 31 of each calendar year.[1]
(b) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A; Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-B, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552.[2]
(2)(b)1 The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of twelve (12) percent, and [
(3)(d)1 (g) A hospital’s adjusted cost-to-charge ratio shall not exceed eighty-five (85) percent, including the twelve (12) percent addition, except for a hospital that services seventy (70) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services.
(2) The adjusted cost-to-charge ratio for a hospital that services seventy (70) percent or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) percent.
(2)(c)2 The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital’s total allowable charges by its adjusted cost-to-charge ratio.
(b) Except for durable medical equipment (DME) and implants which shall be reimbursed at invoice plus twenty (20) percent or manufacturer suggested invoice plus twenty (20) percent, whichever is less.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner[executive-director] by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the commissioner[executive-director] of the Department[Office] of Workers’ Claims.
(2) A hospital may request a review of its assigned ratio by filing a written appeal with the commissioner[executive-director] no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-Charge Ratio. (1)(a) The commissioner[executive-director] shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year[.]
(b) A new hospital shall be assigned a cost-to-charge ratio of eighty (80) percent until it has been in operation for one (1) full fiscal year[.]
(c) A hospital that does not file Worksheets A and G-2 of HCFA-2552 shall be assigned a cost-to-charge ratio of eighty (80) percent.
(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner[executive-director].

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient who is covered under KRS Chapter 342.
(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA-2552.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a uniform billing form as required by 803 KAR 25:09E pursuant to KRS Chapter 216.
Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate billing form required by 803 KAR 25 096 pursuant to KRS Chapter 216.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner[executive-director] setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An Independent practitioner who does not receive direct compensation from the contracting hospital shall use the forms required by 803 KAR 25 096 pursuant to KRS Chapter 216 when billing for professional services and shall be compensated pursuant to the Workers' Compensation Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25 089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Workers' Compensation Medical Fee Schedule for Physicians in these circumstances.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25 089, but he shall receive payment or salary directly from the employing hospital.

(4) Unbundling shall not be practiced.

Dwight T. Lovan, Commissioner
APPROVED BY AGENCY: June 25, 2008
FILED WITH LRC: July 1, 2008 at 9 a.m.
CONTACT PERSON: Carla H. Montgomery, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers' compensation patients.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the Department of Workers' Claims is charged with the duty of setting fee schedules, and KRS 342.020 requires that hospital treatment be reimbursed on behalf of injured workers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth how hospital fees and supplies are reimbursed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements for charging and reimbursing for hospital treatment of injured employees.

(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: Durable Medical Equipment (DME) and implants are defined. The reimbursement for DME and Implants is to be reimbursed at invoice plus 20% or manufactured suggested invoice plus 20%, whichever is less.

(b) The necessity of the amendment to this administrative regulation: It is imperative to keep medical costs within the workers' compensation system comparable to health insurance costs. Some charges for implants and DME had been five (5) times the costs of the equipment. The fees must be fair, current, and reasonable in comparison to fees paid by health insurers according to KRS 342.035. Similar language is being used in the physician fee schedule, and the hospital fee schedule should be consistent to keep similar medical charges equitable.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments make the fees fair, current, and reasonable for similar treatment as paid by health insurers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify fee requirements for durable medical equipment and implants and render medical costs more reasonable. The certainty of these charges should reduce medical fee dispute issues in this area.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured employees, hospitals, medical providers, insurance carriers, self-insurance groups, individual self-insurers and third party administrators.

(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: Some hospitals must change billing for DME and implants to invoice plus 20% or manufacturers' suggested invoice plus 20%.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Some hospitals may need to reduce charges for implants and DME. Other parties may see a reduction in costs rather than an increase.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive reduced prices for DME and implants. Anytime medical costs are reduced, employers could benefit on workers' compensation insurance policies.

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

(a) Initially: The Department of Workers' Claims will use normal budget to implement administrative regulation. There would be no 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: The Department of Workers' Claims' budget will be used which is restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No fees or funding will be increased. Fees charged by hospitals for DME and implants may be reduced.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Hospitals fees charged for implants and DME is reduced to make the charges, fair, current, and reasonable.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to all hospitals and other parties in an equal manner to a workers' compensation claim.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of government with employees.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 342.035

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

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

(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 generated.

(c) How much will it cost to administer this program for the first year? No new administration costs.

(d) How much will it cost to administer this program for subsequent years? No new administration 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:

STATEMENT OF EMERGENCY
806 KAR 17:180E

On July 15, 2008, SB 96, SB 149, and HB 440 of the 2008 legislative session, as found in 2008 Ky Acts ch. 107, 119, and 169, respectively, will become effective. 2008 Ky Acts ch. 107 requires an insurer offering health benefit plans to provide coverage for all colorectal cancer examinations and laboratory tests as specified by the American Cancer Society's guidelines. 2008 Ky Acts ch. 119, sec. 4 requires insurers offering health benefit plans to provide coverage for therapeutic foods, formulas, supplements and low-protein modified foods for the treatment Inborn errors of metabolism or genetic conditions. 2008 Ky Acts ch. 169 secs. 8 and 9 require an insurer to offer policyholders the option to purchase additional dependent coverage. The Kentucky Standard Health Benefit Plan, form HIPMC-SP1, which may be offered in the small group and individual markets under KRS 304.17A-250, is currently offered by five (5) Insurers and the Kentucky Access Program. Since the 2007 version of the standard health benefit does not include these provisions, an amendment to the standard health benefit plan is necessary. KRS 304.17A-250(1) states that the Executive Director of Insurance shall define one (1) standard health benefit plan and shall not alter or amend the standard health benefit plan more frequently than annually. The standard health benefit plan, which is referenced herein and as incorporated by reference, in this administrative regulation was amended to comply with 2008 Ky Acts ch. 107, 119, and 169. Furthermore, any revisions to the standard health benefit plan must be effective on July 15, 2008, pursuant to KRS 304.17A-250 (1). In order to implement the 2008 legislative changes in the standard health benefit plan by the July 15 date established in KRS 304.17-250(1) and the effective date of 2008 Ky Acts ch. 107, 119, and 169, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Complier on July 15, 2008. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEFAN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
JOHN BURKHOLDER, Acting Commissioner

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(Emergency Amendment)

806 KAR 17:180E. Standard health benefit plan.

RELATES TO: KRS 304.17A-080, 304.17A-250

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1)

EFFECTIVE: July 15, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-250(1) requires the Executive Director of Insurance to define by administrative regulation one (1) standard health benefit plan. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. The administrative regulation establishes one (1) standard health benefit plan that may be offered by an Insurer (provide health insurance coverage) in the individual and small group markets and establishes procedures for modifications to the standard health benefit plan.

Section 1. Definitions. (1) "Department" means the Department of Insurance.

(2) "Health Insurance Advisory Council" means the body established in accordance with KRS 304.17A-080.

(3) "Office" is defined in KRS 304.1-050(3).

(4) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders:

(a) Established by the department (office) in accordance with KRS 304.17A-250 and any other health insurance benefit mandated by the General Assembly; and

(b) Included in the Kentucky Standard Health Benefit Plan, HIPMC-SP1.

Section 2. Modification Process. (1) The standard health benefit plan shall remain in effect until the plan or any form is modified in accordance with the procedures established by this section.

(2) The standard health benefit plan may be modified each year and each modification shall apply to each policy or certificate issued or renewed on or after July 15.

(3) A person wishing to make a recommendation for modification of the standard health benefit plan shall:

(a) Submit the recommendation, in writing, to the Kentucky Department (office) of Insurance, Division of Health Insurance Policy and Managed Care, by May 1 of the year preceding the year in which each modification is recommended for implementation;

(b) Explain the need for each recommended modification; and

(c) Provide a statement regarding the cost effect of each recommended modification.

(4) Prior to July 1 of each year:

(a) The department (office) shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration;

(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with KRS 304.17A-050(3);

(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department (office) pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department (office) shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a standard health benefit plan shall:

(a) Implement each modification to the standard health benefit plan prescribed by the department (office); and

(b) Amend each policy form and rate filing to include modifications to the standard health benefit plan.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department (office) of Insurance, 215 West Main Street, Frankfort, Kentucky 40601,
Monday through Friday, 8 a.m. to 4:30 p.m.
(3) Forms may also be obtained on the department's website at http://dol.ppr.ky.gov/kentucky/.

JOHN BURKHOLDER, Acting Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Melea Rivera, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kyntucky 40602-6517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera
(1) Provide a brief summary of.
(a) What this administrative regulation does: This administrative regulation defines the standard health benefit plan and establishes procedures for modifying the standard health benefit plan.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-250(1), which states that the executive director shall define one standard health benefit plan, and to clarify the process for alterations, amendments, and replacements to the standard health benefit plan.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-17A(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-250(1) states that the executive director shall define one standard health benefit plan. This administrative regulation defines "The Kentucky Standard Health Benefit Plan, HiPMMC-SP1", (7/2006), which is incorporated by reference in this administrative 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 statutes by defining the standard health benefit plan pursuant to KRS 304.17A-250(1) and by establishing procedures for recommending any annual modification to the standard health benefit plan.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.
(a) How the amendment will change this existing administrative regulation: This amendment will update the incorporated materials, clarify several provisions and comply with the requirements of KRS 13A, implement recommendations from the Health Insurance Advisory Council, as authorized in KRS 304.17A-080, and comply with 2008 Ky Acts ch. 107, sec. 4.
(b) The necessity of the amendment to this administrative regulation: 2008 Ky Acts ch. 107 requires an insurer offering health benefit plans to provide coverage for colorectal cancer examinations and laboratory tests as specified by the American Cancer Society's guidelines. 2008 Ky Acts ch. 119, sec. 4 requires insurers offering health benefit plans to provide coverage for therapeutic foods, formulas, supplements and low-protein modified foods for the treatment of inborn errors of metabolism or genetic conditions. 2008 Ky Acts ch. 169, secs. 8 and 9 require an insurer to offer policyholders the option to purchase additional dependent coverage. Since the 2007 version of the standard health benefit, which is incorporated by reference in this administrative regulation, does not offer these provisions, an amendment is necessary.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-250(1) allows the commissioner to amend the standard health benefit plan annually. KRS 304.17A-080 requires the Health Insurance Advisory Council to review and discuss the design of the standard health benefit plan. This amendment revises the material incorporated by reference in conformance with recommendations from the Health Insurance Advisory Council at KRS 304.17A-110 and 119, and the amendment is necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-250(1) requires the commissioner of insurance to define by administrative regulation one standard health benefit plan that may provide health insurance coverage in the individual and small group markets.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A change during the 2004 legislative session removed the requirement for all health insurers to offer the standard health benefit plan; therefore, the Kentucky Department of Insurance estimates that this administrative regulation will affect the Kentucky Access Program and approximately five (5) Kentucky health insurers offering health benefit plans in the individual and small group market. Approximately 13,000 individuals are covered under a standard health benefit plan.
(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 Kentucky Access Program, which uses the standard health benefit plan as a basis for its plan options, and insurers offering the standard health benefit plan will be required to amend policies and certificates of coverage and modify computer systems, as necessary.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The Kentucky Access Program and health insurers impacted by this administrative regulation routinely amend their plans yearly to comply with changing federal or state laws and approximately 13,000 individuals are covered under this plan; therefore no significant costs are anticipated.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The insurers' policies and certificates of coverage will be in compliance with 2008 Ky Acts ch. 107, 119, and 169 and this administrative regulation.
(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 on an initial basis are believed to be minimal, if any, for the Department of Insurance.
(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Department of Insurance.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Department of Insurance.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This administrative regulation will not result in any increase in fees or funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase fees.
(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers offering the standard health benefit plan and Kentucky Access.

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 Department of Insurance.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-250(1) requires the commissioner of insurance to define by administrative regulation one (1) standard health benefit plan that may provide health insurance coverage in the individual and small group markets. 2008 Ky
Acts ch. 107, 119, and 169 created new and amended existing laws relating to coverage by insurers. This amendment to a regulation will include this coverage in the Kentucky Standard Health Benefit Plan, which is incorporated by reference in 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? No revenue for state government will be generated as a result of this 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? No revenue for state government will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Department of Insurance.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation in subsequent years are believed to be minimal, if any, for the Department of Insurance.

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
907 KAR 1:825E

This emergency administrative regulation is being promulgated to: Amend diagnosis-related group (DRG) inpatient hospital reimbursement to comply with 2006 Ky Acts ch. 252, KRS 142.303, and 205.638; and preserve the viability of inpatient hospitals providing neonatal care in order to ensure the adequate availability of neonatal care for Medicaid recipients. This action must be taken on an emergency basis to comply with 2006 Ky Acts ch. 252 and to ensure the adequate availability of neonatal care for Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation addressing the same subject that was filed with the regulations compiler on November 15, 2007 in that it: Reimbursements in aggregate for level I, II and III neonatal care categories at 100 percent of costs; reimburses individual level I, II, or III neonatal centers at the average cost per DRG for the respective category; excludes high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal center relative weight calculations; establishes supplemental payments to a high intensity level II neonatal center for DRGs 675 - 680 at $2,870 per paid discharge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospitals and Provider Operations
(New Emergency Administrative Regulation)

907 KAR 1:825E. Diagnosis-related group (DRG) Inpatient hospital reimbursement.

RELATES TO: KRS 138.140, 205.510(18), 205 565, 205 637, 205 638, 205 639, 205 640, 205 641, 216 380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.201(c), 447.250-447.280, 42 U.S.C. 1395l(f), 1395k(5)(F), 1395f, 1395d, 1395f-4
EFFECTIVE DATE: June 16, 2008

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(5) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining the amount payable via a diagnosis-related group methodology by the Medicaid Program for a hospital inpatient service including provisions necessary to enhance reimbursement pursuant to KRS 142.303, 205.638, and 2006 Ky Acts ch. 252.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).
(2) "Adjustment factor" means the factor by which non-neonatal care relative weights shall be reduced to offset the expenditure pool adjustment necessary to enhance neonatal care relative weights.
(3) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.
(4) "Base rate" means the per discharge hospital-specific DRG rate for an acute care hospital that is multiplied by the relative weight to calculate the DRG base payment.
(5) "Base year" means the state fiscal year period used to establish DRG rates.
(6) "Base year Medicare rate components" means Medicare inpatient prospective payment system rate components in effect on October 1 during the base year as listed in the CMS IPPS Prior Program.
(7) "Budget neutrality" means that reimbursements resulting from rates paid to providers under a per discharge methodology do not exceed payments in the base year adjusted for inflation based on the CMS Input Price Index or changes in patient utilization.
(8) "Budget neutrality factor" means a factor that is applied to a DRG base rate or the direct graduate medical educational payment so that budget neutrality is achieved.
(9) "Capital costs" means capital related expenses including insurance, taxes, interest and depreciation related to plant and equipment.
(10) "CMS" means the Centers for Medicare and Medicaid Services.
(11) "CMS IPPS Prior Program" means the software program published on the CMS website of http://www.cms.hhs.gov which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.
(12) "Cost center specific cost-to-charge ratio" means a ratio of a hospital's cost center specific total hospital costs to its cost center specific total charges.
(13) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.
(14) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and is designated as a critical access hospital by the department.
(15) "Department" means the Department for Medicaid Services or its designated agent.
(16) "Diagnostic categories" means the diagnostic classifications containing one or more DRGs used by Medicare programs, assigned in the base year with modifications established in Section 2(15) of this administrative regulation.
(17) "Diagnostic related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.
(18) "Distinct part unit" means a separate unit within an acute
care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(19) "DRG average length of stay" means the Kentucky arithmetic mean length of stay for each DRG, calculated by dividing the sum of patient days in the base year claims data for each DRG by the number of discharges for each DRG.

(20) "DRG base payment" means the base payment for claims paid under the DRG methodology.

(21) "Enhanced neonatal care relative weight" means a neonatal care relative weight increased, with a corresponding reduction to non-neonatal care relative weights, to facilitate reimbursing neonatal care at 100% of costs in aggregate by category.

(22) "Federal financial participation" means funding from the Centers for Medicare and Medicaid Services.

(23) "Fixed loss cost threshold" means the amount, equal to $23,000, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(24) "Geometric mean" means the measure of central tendency for a set of values expressed as the nth (number of values in the set) root of their product.

(25) "GIL" means Global Insight, Incorporated.

(26) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396(w)(6)(A).

(27) "High intensity level II neonatal center" means an in-state hospital with a level II neonatal center which:

(a) Is licensed for a minimum of twenty-four (24) neonatal level II beds;
(b) Has a minimum of 1,500 Medicaid neonatal level II patient days per year;
(c) Has a gestational age lower limit of twenty-seven (27) weeks; and
(d) Has a full-time perinatologist on staff.

(28) "High volume per diem payment" means a per diem add-on payment made to hospitals meeting selected Medicaid utilization criteria established in Section 2(12) of this administrative regulation.

(29) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(30) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(31) "Intrahospital transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.

(32) "Level I neonatal center" means a facility with a licensed level I neonatal intensive care unit which provides care to newborn infants of a more intensive nature than the usual nursing care provided in newborn acute care units, on the basis of physicians' orders and approved nursing care plans.

(33) "Level II neonatal center" means a facility with a licensed level II bed which provides specialty care for infants which includes monitoring for apnea spells, incubator or other assistance to maintain the infant's body temperature, and feeding assistance.

(34) "Level III neonatal center" means a facility with a licensed level III bed which provides specialty care of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special Intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.

(35) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(36) "Low intensity level III neonatal center" means a facility with fewer than four (4) licensed level III neonatal beds.

(37) "Medicaid shortfall" means the difference between a provider's cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(38) "Medical education costs" means direct costs that are:

(a) Associated with an approved intern and resident program; and
(b) Subject to limits established by Medicare.

(39) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(40) "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(41) "Pediatric teaching hospital" is defined in KRS 205.565(1).

(42) "Per diem rate" means the per diem rate paid by the department for inpatient care in an in-state psychiatric or rehabilitation hospital, inpatient care in a long-term acute care hospital, inpatient care in a critical access hospital or psychiatric or rehabilitation services in an in-state acute care hospital which has a distinct part unit.

(43) "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

(44) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(45) "Rebase" means to redefine base rates, per diem rates, and other applicable components of the payment rates using more recent data.

(46) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

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

(48) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(49) "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(C).

(50) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or
(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and
2. That does not possess only a residency program or rotation agreement.

(51) "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

(52) "Trend factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(53) "Type III hospital" means an in-state disproportionate share university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(54) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(55) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(i).

(56) "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;
(b) Has a Medicaid utilization rate greater than twenty-five (25) percent, and
(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

Section 2: Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital.

(1) An in-state acute care hospital shall be paid for an inpatient acute care service on a fully-prospective per discharge basis.

(2) For an inpatient acute care service in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

(a) A DRG base payment,
(b) If applicable, a high volume per diem payment; and
(c) If applicable, a cost outlier payment amount.
(3)(a) A DRG shall be based on the Medicare grouper in effect in the Medicare inpatient prospective payment system at the time of reassigning.
(b) For a rate effective upon the effective date of this administrative regulation, the department shall assign to the base year claims data, DRG classifications from Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.
(4) A DRG base payment shall be calculated for a discharge by multiplying the hospital specific base rate by the DRG relative weight.
(5)(a) The department shall determine a base rate by calculating a case mix, outlier payment and budget neutrality adjusted cost per discharge for each in-state acute care hospital as described in subsections (5) through (10) of this section of this administrative regulation.
(b) A hospital specific cost per discharge used to calculate a base rate shall be based on base year inpatient paid claims data.
(c) For a rate effective upon the effective date of this administrative regulation, a hospital specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data.
(6)(a) The department shall calculate a cost to charge ratio for the fifteen (15) Medicaid and Medicare cost centers displayed in paragraph (b) of this subsection.
(b) If a hospital lacks cost-to-charge information for a given cost center, or if the hospital’s cost-to-charge ratio is above or below three (3) standard deviations from the mean of a log distribution of cost-to-charge ratios, the department shall use the statewide geometric mean cost-to-charge ratio for the given cost center.

<table>
<thead>
<tr>
<th>Kentucky Medicaid Cost Center</th>
<th>Kentucky Medicaid Cost Center Description</th>
<th>Medicaid Cost Report Standard Cost Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Routine Days</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>2 Intensive Days</td>
<td>26, 27, 28, 29, 30</td>
<td></td>
</tr>
<tr>
<td>3 Drugs</td>
<td>48, 56</td>
<td></td>
</tr>
<tr>
<td>4 Supplies or equipment</td>
<td>55, 66, 67</td>
<td></td>
</tr>
<tr>
<td>5 Therapy services excluding inhalation therapy</td>
<td>50, 51, 52</td>
<td></td>
</tr>
<tr>
<td>6 Inhalation therapy</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>7 Operating room</td>
<td>37, 38</td>
<td></td>
</tr>
<tr>
<td>8 Labor and delivery</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>9 Anesthesia</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>10 Cardiology</td>
<td>53, 54</td>
<td></td>
</tr>
<tr>
<td>11 Laboratory</td>
<td>44, 45</td>
<td></td>
</tr>
<tr>
<td>12 Radiology</td>
<td>41, 42</td>
<td></td>
</tr>
<tr>
<td>13 Other services</td>
<td>43, 46, 47, 57, 58, 59, 60, 61, 62, 63, 63.5, 64, 65, 68</td>
<td></td>
</tr>
<tr>
<td>14 Nursery</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>15 Neonatal intensive days</td>
<td>30</td>
<td></td>
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</tbody>
</table>

(7)(a) For a hospital with an intern or resident reported on its Medicare cost report, the department shall calculate allocated overhead by computing the difference between the costs of interns and residents before and after the allocation of overhead costs.
(b) The ratio of overhead costs for interns and residents to total facility costs shall be multiplied by the costs in each cost center prior to computing the cost center cost-to-charge ratio.
(b) For an in-state acute care hospital, the department shall compile the number of patient discharges, patient days and total charges from the base year claims data. The department shall exclude from the rate calculation:
(a) Claims paid under a managed care program;
(b) Claims for rehabilitation and psychiatric discharges reimbursed on a per diem basis;
(c) Transplant claims; and
(d) Revenue codes not covered by the Medicaid Program.
(9)(a) The department shall calculate the cost of a base year claim by multiplying the charges from each accepted revenue code by the corresponding cost center specific cost-to-charge ratio.
(b) The department shall base cost center specific cost-to-charge ratios on data extracted from the most recently, as of June 1, finalized cost report.
(c) Only an inpatient revenue code recognized by the department shall be included in the calculation of estimated costs.
(10) Using the base year Medicaid claims referenced in subsection (9) of this section of this administrative regulation, the department shall compute a hospital specific cost per discharge by dividing a hospital’s Medicaid costs by its number of Medicaid discharges.
(11) The department shall determine an in-state acute care hospital’s DRG base payment rate by adjusting the hospital’s specific cost per discharge by the hospital’s case mix, expected outlier payments and budget neutrality.
(a) A hospital’s case mix adjusted cost per discharge shall be calculated by dividing the hospital’s cost per discharge by its case mix index; and
2. The hospital’s case mix index shall be equal to the average of its DRG relative weights for acute care services for base year Medicaid discharges referenced in subsection (8) of this section of this administrative regulation.
(b) A hospital’s case mix adjusted cost per discharge shall be multiplied by an initial budget neutrality factor.
2. The initial budget neutrality factor for a rate shall be 0.6962 for all hospitals.
3. When rates are rebased, the initial budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.
(c) Each hospital’s case mix and initial budget neutrality adjusted cost per discharge shall be multiplied by a hospital-specific outlier payment factor.
2. A hospital-specific outlier payment factor shall be the result of the following formula: (expected DRG non-outlier payment) - (expected proposed DRG outlier payment)/(expected DRG non-outlier payments).
(d) A hospital’s case mix, initial budget neutrality and outlier payment adjusted cost per discharge shall be multiplied by a secondary budget neutrality factor.
2. The secondary budget neutrality factor for a hospital shall be 1.0744.
3. When rates are rebased, the secondary budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.
(12)(a) The department shall make a high volume per diem payment to an in-state acute care hospital with high Medicaid volume for base year covered Medicaid days referenced in subsection (8) of this section of this administrative regulation.
(b) High volume per diem criteria shall be based on the number of Kentucky Medicaid days or the hospital’s Kentucky Medicaid utilization percentage.
(c) A high volume per diem payment shall be made in the form of a per diem add-on amount in addition to the DRG base payment rate encompassing the DRG average length-of-stay associated with the claim’s DRG classification.
(d) The department shall determine a per diem payment associated with Medicaid days-based criteria separately from a per diem payment associated with Medicaid utilization-based criteria.
2. If a hospital qualifies for a high volume per diem payment under both the Medicaid days-based criteria and the Medicaid utilization-based criteria, the department shall pay the higher of the two add-on per diem amounts.
(e) The department shall pay the indicated high volume payment per diem if either the base year covered Kentucky Medicaid
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inpatient days or Kentucky Medicaid inpatient day's utilization percentage meet the criteria established in Table 2 below:

<table>
<thead>
<tr>
<th>Table 2. High Volume Adjustment Eligibility Criteria</th>
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<tbody>
<tr>
<td>Kentucky Medicaid Inpatient Days Range</td>
</tr>
<tr>
<td>Days Range</td>
</tr>
<tr>
<td>0 - 4,999 days</td>
</tr>
<tr>
<td>3,500 - 4,499 days</td>
</tr>
<tr>
<td>4,500 - 7,999 days</td>
</tr>
<tr>
<td>7,000 - 10,999 days</td>
</tr>
<tr>
<td>11,000 - 19,999 days</td>
</tr>
<tr>
<td>20,000 and above days</td>
</tr>
</tbody>
</table>

(f) The department shall use base year claims data referenced in subsection (8) of this section of this administrative regulation to determine if a hospital qualifies for a high volume per diem add-on payment.

(g) The department shall only change a hospital's classification regarding a high volume add-on payment or per diem amount during a rebase year.

(13)(a) The department shall make an additional cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each diagnostic category.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d) The department shall calculate the estimated cost of a discharge, for purposes of comparing the discharge cost to the outlier threshold, by multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicare allowed charges.

2. A Medicare operating or capital-related cost-to-charge ratio shall be extracted from the CMS IPPS Price Program.

(e) The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2. The fixed loss cost threshold shall equal $29,000.

(f) A cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(14) The department shall calculate a Kentucky Medicaid-specific DRG relative weight by:

(a) Selecting Kentucky base year Medicaid inpatient claims, excluding those described in subsection (8) of this section of this administrative regulation; and

(b) For a rate effective upon the effective date of this administrative regulation, a hospital-specific cost per discharge shall be calculated using state fiscal year 2005 Inpatient Medicaid paid claims data.

(c) Reassigning the DRG classification for the base year claims based on the Medicare DRG in effect in the Medicare inpatient prospective payment system at the time of rebaseing; and

(d) For a rate effective upon the effective date of this administrative regulation, the department shall assign to the base year claims data the Medicare grouper version 24 DRG classifications which were effective in the Medicare inpatient prospective payment system as of October 1, 2006;

(e) Removing the following claims from the calculation:

1. Claims data for a discharge reimbursed on a per diem basis including:

a. A psychiatric claim, defined as follows:

(i) An acute care hospital claim with a psychiatric DRG;

(ii) A psychiatric distinct part unit claim; and

(iii) A psychiatric hospital claim;

b. A rehabilitation claim, defined as follows:

(i) An acute care hospital claim with a rehabilitation DRG;

(ii) A rehabilitation distinct part unit claim; and

(iii) A rehabilitation hospital claim;

c. A critical access hospital claim; and

d. A long term acute care hospital claim;

2. A transplant service claim as specified in subsection (19) of this section of this administrative regulation;

3. A claim for a patient discharged from an out-of-state hospital; and

4. A claim with total charges equal to zero (0);

(d) Calculating a relative weight value for a low volume DRG by:

1. Arraying a DRG with less than twenty-five (25) cases in order by the Medicare DRG relative weight in effect in the Medicare Inpatient prospective payment system at the same time as the Medicare DRG grouper version, published in the Federal Register, relied upon for Kentucky DRG classifications; and

2. For a rate effective upon the effective date of this administrative regulation, the department shall use the Medicare DRG relative weight which was effective in the Medicare Inpatient prospective payment system as of October 1, 2006;

3. Calculating a DRG relative weight for each category; and

4. Assigning the relative weight calculated for a category to each DRG included in the category;

(e) Standardizing the labor portion of the cost of a claim for differences in wage and the full cost of a claim for differences in indirect medical education costs across hospitals based on base year Medicare rate components;

a. For a rate effective upon the effective date of this administrative regulation, base year Medicare rate components shall equal Medicare rate components effective in the Medicare Inpatient prospective payment system as of October 1, 2005; and

b. Base year Medicare rate components used in the Kentucky Inpatient prospective payment system include:

(i) Labor-related percentage and non-labor-related percentage;

(ii) Operating and capital cost-to-charge ratios;

(iii) Operating indirect medical education costs; or

(iv) Wage indices.

2. a. The department shall standardize costs using the following formula: standard cost = (((labor related percentage * costs)/Medicare wage index) + (nonlabor related percentage * costs))/1 + Medicare operating indirect medical education factor);

4. For a rate effective upon the effective date of this administrative regulation, the labor related percentage shall equal sixty-two (62) percent and the nonlabor related percentage shall equal thirty-eight (38) percent;

(f) Removing statistical outliers by deleting any case that is:

1. Above or below three (3) standard deviations from the mean cost per discharge; and

2. Above or below three (3) standard deviations from the mean cost per day;

(g) Computing an average standardized cost for all DRGs in aggregate and for each DRG, excluding statistical outliers;

(h) Computing DRG relative weights:

1. For a DRG with twenty-five (25) claims or more by dividing the average cost per discharge for each DRG by the statewide average cost per discharge; and

2. For a DRG with less than twenty-five (25) claims by dividing the average cost per discharge for each of the five (5) low volume DRG categories by the statewide average cost per discharge;

(i) Calculating, for the purpose of a transfer payment, Kentucky Medicaid geometric mean length of stay for each DRG based on the base year claims data used to calculate DRG relative weights;

(j) Employing enhanced neonatal care relative weights;

(k) Applying an adjustment factor to relative weights not referenced in paragraph (j) of this subsection to offset the level I, II, and III neonatal care relative weight increase resulting from the use of enhanced neonatal care relative weights; and

(l) Excluding high intensity level II neonatal center claims and
low intensity level III neonatal center claims from the neonatal care relative weight calculations.

(15) The department shall:
(a) Separately reimburse for a mother's stay and a newborn's stay based on the diagnostic category assigned to the mother's stay and to the newborn's stay;
(b) Establish a unique set of diagnostic categories and relative weights for an in-state acute care hospital identified by the department as qualifying as a level I, II, or III neonatal center as follows:
  1. The department shall exclude high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal center relative weight calculations;
  2. The department shall reassign a claim that would have been assigned to a Medicare DRG 385-399 to a Kentucky-specific: a. DRG 675-680 for an in-state acute care hospital with a level II neonatal center; and
   b. DRG 685-690 for an in-state acute care hospital with a level III neonatal center;
  3. The department shall assign a DRG 385-399 for a neonatal claim from a hospital which does not operate a level II or III neonatal center; and
  4a. The department shall compute a separate relative weight for a level II, or III neonatal intensity care unit (NICU) neonatal DRG;
   b. The department shall use base year claims from level II neonatal centers, excluding claims from any high intensity level II neonatal center, to calculate relative weights for DRGs 675-680; and
   c. The department shall use base year claims from level III neonatal centers to calculate relative weights for DRGs 685-690.

(16) The department shall expend in aggregate by category (level I, II, or III neonatal center category) and not by individual facilities:
(a) A total expenditure for level I neonatal center care equal to 100 percent of cost;
(b) A total expenditure for level II neonatal center care equal to 100 percent of cost; or
(c) A total expenditure for level III neonatal center care equal to 100 percent of cost.

(17) The department shall reimburse an individual:
(a) Level I neonatal center for level I neonatal care at the average cost per DRG of all level I neonatal centers;
(b) Level II neonatal center for level II neonatal care at the average cost per DRG of all level II neonatal centers; or
(c) Level III neonatal center for level III neonatal care at the average cost per DRG of all level III neonatal centers.

(18) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(a) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per diem discharge reimbursement amount.
  1. The department shall calculate an average daily rate by dividing the DRG base payment by the statewide Medicaid geometric mean length-of-stay for a patient's DRG classification.
  2. If a hospital qualifies for a high volume per diem add-on payment in accordance with Section 21(2) of this administrative regulation, the department shall pay the hospital the applicable per diem add-on for the DRG average length-of-stay.
  3. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(b) For a hospital receiving a transferred patient, the department shall reimburse the DRG base payment, and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(19) The department shall treat a transfer from an acute care hospital to a qualifying postacute care facility for selected DRGs in accordance with paragraph (b) of this subsection as a postacute care transfer.

(a) The following shall qualify as a postacute care setting:
  1. A psychiatric, rehabilitation, children's, long-term, or cancer hospital;
  2. A skilled nursing facility; or
  3. A home health agency.

(b) A DRG eligible for a postacute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(4)(C)(ii).

(c) The department shall pay each transferring hospital an average daily rate for each day of stay.
  1. A payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.
  2. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay, up to the full DRG base payment.

3. The remaining DRGs as referenced in paragraph (b) of this subsection shall receive twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer.

(d) The per diem amount shall be the base DRG payment allowed divided by the statewide Medicaid geometric mean length of stay for a patient's DRG classification.

(20) The department shall reimburse for an intrahospital transfer from or to an acute care bed to or from a rehabilitation or psychiatric distinct part unit:
(a) The full DRG base payment allowed; and
(b) The facility-specific distinct part unit per diem rate, in accordance with 907 KAR 1:815, for each day the patient remains in the distinct part unit.

(21)(a) The department shall reimburse for a kidney, cornea, pancreas, or kidney and pancreas transplant on a prospective per discharge method according to the patient's DRG classification.
(b) A transplant not referenced in paragraph (a) of this subsection, shall be reimbursed in accordance with 907 KAR 1:350.

Section 3. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:
(1) Be included with the related inpatient admission reimbursable per discharge methodology;
(2) Exclude a service furnished by a home health agency, a skilled nursing facility or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 4. Direct Graduate Medical Education Costs at In-State Hospitals with Medicare-approved Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education costs is not provided to the department, pursuant to 42 C.F.R. 447.201(c) or other federal regulation or law, the department shall not reimburse for direct graduate medical education costs.
(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall reimburse for the direct costs of a graduate medical education program approved by Medicare as follows:
(a) A payment shall be made:
   1. Separately from the per discharge and per diem payment methodologies;
   2. On an annual basis; and
(b) The department shall determine an annual payment amount for a hospital as follows:
  1. The hospital-specific and national average Medicare per intern and resident amount effective for Medicare payments on October 1 of each calendar year shall be provided by each approved hospital's Medicare fiscal intermediary;
  2. The higher of the average of the Medicare hospital-specific per intern and resident amount or the Medicare national average amount shall be selected;
  3. The selected per intern and resident amount shall be multip-
lied by the hospital's number of interns and residents used in the calculation of the indirect medical education operating adjustment factor. The resulting amount is an estimate of total approved direct graduate medical education costs;

4. The estimated total approved direct graduate medical education costs shall be divided by the number of total inpatient days as reported in the hospital's most recently finalized cost report on Worksheet D, Part 1, to determine an average approved graduate medical education cost per day amount;

5. The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program; and

6. Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 5. Budget Neutrality Factors. (1) When rates are re-based, estimated projected reimbursement in the universal rate year shall not exceed payments for the same services in the prior year adjusted for inflation using the inflation factor prepared by GII for the universal rate year and adjusted for changes in patient utilization.

(2) The estimated total payments for each facility under the reimbursement methodology in effect in the year prior to the universal rate year shall be estimated from base year claims.

(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated from base year claims.

(4) If the sum of all the acute care hospitals' estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals' adjusted estimated payments under the prior year's reimbursement methodology, each hospital's DRG base rate per diem rate shall be multiplied by a uniform percentage to result in estimated total payments for the universal rate year being equal to total adjusted payments in the year prior to the universal rate year.

Section 6. Reimbursement Updating Procedures. (1) The department shall annually, on July 1, use the inflation factor prepared by GII for the universal rate year to inflate a hospital-specific base rate for rate years between rebasing periods.

(2) Except for an appeal in accordance with Section 18 of this administrative regulation, the department shall make no other adjustment.

(3) The department shall rebase DRG reimbursement every four (4) years.

Section 7. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 8. Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of a Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1 and the Supplemental Medicaid Schedule KMAP-4 as follows:

(a) A cost report shall be submitted:
   1. For the fiscal year used by the hospital, and
   2. Within five (5) months after the close of the hospital's fiscal year;

(b) Except as follows, the department shall not grant a cost report submittal extension:
   1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or
   2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payments to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 9. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services.

2. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court;

(c) 1. A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity.

2. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

3. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on the Supplemental Medicaid Schedule KMAP-1.

(3) The Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted with the annual cost report.

Section 10. Treating of a Cost Report for DRG Re-basing Purposes. (1) An allowable Medicaid cost, exclusive of a capital cost, as shown in a cost report file in the department, either audited or unaudited, shall be treated to the beginning of the universal rate year to update a hospital's Medicaid cost.

(2) The department shall use the inflation factor prepared by GII as the trending factor for the period being trended.

Section 11. Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The department shall use the inflation factor prepared by GII as the indexing factor for the universal rate year.

Section 12. Readmission for Out-of-state Hospitals. (1) The department shall reimburse an acute care out-of-state hospital, except for a child's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state, for inpatient care:

(a) On a fully-prospective per discharge basis based on the patient's diagnostic category; and

(b) An all-inclusive rate.

(2) The all-inclusive rate referenced in subsection (1) of this section of this administrative regulation shall:

(a) Equal the facility-specific Medicare base rate multiplied by the Kentucky-specific DRG relative weights, except that the DRG relative weights shall exclude any adjustment for in-state hospitals pursuant to 2006 Ky. Acts ch. 252;

(b) Exclude:
   1. Medicare indirect medical education cost or reimbursement;
   2. High volume per diem add-on reimbursement;
   3. Disproportionate share hospital distributions; and
   4. Any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252; and

(c) Include a cost outlier payment if the associated discharge
meets the cost outlier criteria established in Section 2(13) of this administrative regulation;
1. The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim;
2. The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges;
3. The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year; and
4. The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge’s outlier threshold.

(3) The department shall reimburse for inpatient acute care provided by an out-of-state children’s hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, an all-inclusive rate equal to the average all-inclusive base rate paid to in-state children’s hospitals.

(4) An out-of-state provider shall not be eligible to receive high volume per diem add-on payments, indirect medical education reimbursement or disproportionate share hospital payments.

(5) The department shall make a cost outlier payment for approved discharges meeting Medicare criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to Quality Improvement Organization review and approval.

(a) The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim.

(b) The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

(c) The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.

(d) The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge’s outlier threshold.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section of this administrative regulation shall be contingent upon the department’s receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:
   a. Equal to the sum of the hospital’s Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and
   b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:
   a. Equal to the difference between payments made in accordance with Sections 2, 3, and 4 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;
   b. That is prospectively determined with no end of the year settlement; and

3. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and
4. A hospital that qualifies as an urban trauma center hospital in an amount:
   a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;
   b. Based upon a hospital’s proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;
   c. That is prospectively determined with an end of the year settlement; and
   d. That is consistent with the requirements of 42 C.F.R. 447.271.

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital System:

1. In an amount that is equal to the lesser of:
   a. The difference between what the department pays for inpatient services pursuant to Section 2, 3, and 4 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or
   b. $7.5 million per year in aggregate;
   2. For a service provided on or after July 1, 2005; and
   3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participa-

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System;

(d) Make a supplemental payment to an in-state high intensity level II neonatal center of $2,870 per paid discharge for a DRG 675 - 680.

(4) An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year’s payment to be made to the facility.

(a) For the purpose of this section of this administrative regulation, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state’s Section 1115 waiver as described in 907 KAR 1:705.

(5) A payment made under this section of this administrative regulation shall not duplicate a payment made via 907 KAR 1:820.

(6) A payment made in accordance with this section of this administrative regulation shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned or operated hospital the full cost of an inpatient service via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicaid and Medicare Services (CMS).

(2) To determine the amount of costs eligible for a CPE, a hospital’s allowed charges shall be multiplied by the hospital’s operating cost-to-total charges ratio.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor’s Records. If a hospital has a contract with a subcontractor for services costing or valued at $10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor’s financial information; and

(b) In accordance with 507 KAR 1:572; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.
Section 17. New Provider, Change of Ownership, or Merged Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

(2)(a) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(b) During the projected rate year, the budget shall be adjusted if indicated and justified by the submission of additional information.

(3) In the case of two (2) or more separate entities that merge into one (1) organization, the department shall:

(a) Merge the latest available data used for rate setting;

(b) Combine bed utilization statistics, creating a new occupancy ratio;

(c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trending and indexed costs;

(d) Compute on a weighted average the rate of increase control applicable to each entity, based on the reported paid Medicaid days for each entity taken from the cost report previously used for rate setting; and

(e) 1. Require each provider to submit a cost report for the period ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end.

2. A cost report for the period starting with the day of the merger and ending with the fiscal year end of the merged entity shall also be filed with the department in accordance with Section 8 of this administrative regulation.

Section 18. Appeals. (1) An administrative review shall not be available for the following:

(a) A determination of the requirement, or the proportional amount, of a budget neutrality adjustment in the prospective payment rate;

(b) The establishment of:

1. Diagnostic related groups;

2. The methodology for the classification of an inpatient discharge within a DRG;

3. An appropriate weighting factor which reflects the relative hospital resource used with respect to a discharge within a DRG.

(2) An appeal shall comply with the review and appeal provisions established in 907 KAR 1.671.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Medicaid Schedule KMAP-1", January 2007 edition, effective January 1, 2007; and


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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 16, 2008 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Darlene Burgess (502) 564-6511.

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for care in an Inpatient acute care hospital. The Department for Medicaid Services (DMS) shall employ a diagnosis-related group (DRG) methodology to reimburse for inpatient acute care. Previously one (1) administrative regulation established DMS reimbursement for DRG hospitals, per diem hospitals and disproportionate share hospital (DSH) distributions. DMS divided the one (1) administrative regulation into three (3) with this administrative regulation establishing DRG hospital reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the payment methodology for inpatient hospital acute care.

(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 payment methodology for inpatient hospital acute 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: This administrative regulation is a new administrative regulation; however, it amends policy by reimbursing in aggregate for level I, II and III neonatal care at 100% of costs; reimbursing individual level I, II, or III neonatal centers at the average cost per DRG for the respective category and excluding high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonate inpatient weight calculations.

(b) The necessity of the amendment to this administrative regulation: The amended policy is necessary to ensure adequate reimbursement of neonatal care in order to ensure the adequate availability of such care for Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by preserving the viability of inpatient hospitals providing neonatal care in order to ensure the adequate availability of neonatal care for Medicaid recipients.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by ensuring the viability of inpatient hospitals providing neonatal care in order to ensure the adequate availability of neonatal care for Medicaid recipients.

(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 all hospitals participating in the Kentucky Medicaid Program. Currently there are an estimated 350 In-state hospitals participating in the 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: The regulated entities will not be required to take any action to comply with the administrative regulation. Presumably they may educate staff regarding the reimbursement changes; however, no new requirements are mandated via this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Reimbursement for neonatal care is enhanced but as the funding source is a finite pool, other components of care may experience a reimbursement reduction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Neonatal care reimbursement is increasing which in turn should ensure the adequate availability of neonatal care for Medicaid recipients.

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

(a) Initially: DMS projects the administrative regulation to be budget neutral as it redistributes reimbursement within, rather than infuses additional monies into, the existing funding pool.

(b) On a continuing basis: DMS projects the administrative
regulation to be budget neutral as it re-distributes reimbursement within, rather than infuses additional monies into, the existing funding pool.

(5) 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, matching funds of general fund appropriations and hospital provider tax funds pursuant to KRS 142.303, 205.638, and 2006 Ky Acts ch. 252.

(7) Provide an assessment of whether an 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 administrative regulation.

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

(9) Timing: Is it being applied? Out-of-state inpatient acute care hospital reimbursement, contrary to in-state acute care hospital reimbursement, shall not include provider tax enhancements as provider tax legislation only applies to in-state hospitals. Level I, II and III neonatal care shall be reimbursed, in aggregate, at 100% of costs in order to ensure the adequate availability of neonatal care for Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Chapter 412, Chapter 413 and 447.200, 447.250, 447.271, and 447.272 address inpatient hospital reimbursement provisions.

2. State compliance standards. KRS 205.520(2) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 addresses Medicaid reimbursement. 2006 Ky Acts ch. 252, KRS 142.303 and 205.638 address the utilization of hospital provider tax revenues to enhance inpatient hospital reimbursement.

3. Minimum or uniform standards contained in the federal mandate. Medicaid agency payments to providers must be sufficient to enlist enough providers so that Medicaid services are available to recipients at least to the same extent that comparable services are available to the general population. Payments for hospital services should be rates that the State finds, and makes assurance satisfactory to the United States Health and Human Services Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards.

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 sterner, than federal, requirements.

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

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 county-owned hospitals as well as state university teaching hospitals.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 142.303, 205.520, 205.638, 2006 Ky Acts ch. 252, 42 C.F.R. 412 and 413.

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 is not expected to generate additional revenue for state or local government entities.

(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 is not expected to generate additional revenue for state or local government entities.

(c) How much will it cost to administer this program for the first year? DMS projects the administrative regulation to be budget neutral as it redistributes reimbursement within, rather than infuses additional monies into, the existing funding pool.

(d) How much will it cost to administer this program for subsequent years? DMS projects the administrative regulation to be budget neutral as it redistributes reimbursement within, rather than infuses additional monies into, the existing funding pool.

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.

STATEMENT OF EMERGENCY

907 KAR 1:911E

This emergency administrative regulation is being promulgated to repeal 907 KAR 1:013, Payments for hospital inpatient services. 907 KAR 1:013 is no longer necessary as the reimbursement methodology for inpatient hospital services is established or being established in three (3) other administrative regulations. Previously, 907 KAR 1:013 established per diem hospital reimbursement provisions, diagnosis-related group (DRG) inpatient hospital reimbursement provisions and disproportionate share hospital (DSH) distributions. 907 KAR 1:815 now establishes per diem inpatient hospital reimbursement provisions, 907 KAR 1:820 establishes disproportionate share hospital distribution provisions, and 907 KAR 1:825 is concurrently filed to establish diagnosis-related group (DRG) inpatient hospital reimbursement provisions. 907 KAR 1:825 must be implemented on an emergency basis, in accordance with KRS 13A.190(1)(a), In order to preserve the viability of inpatient hospitals providing neonatal care to ensure the adequate availability of neonatal care for Medicaid recipients. 907 KAR 1:013 must be repealed on an emergency basis in order to facilitate the filing of 907 KAR 1:825 on an emergency basis; therefore, 907 KAR 1:911 is being filed as an emergency administrative regulation in accordance with KRS 13A.190(1)(a). This emergency administrative regulation shall not be replaced by an ordinary administrative regulation as it repeals an administrative regulation and an ordinary regulation is not necessary for continuing effect.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Hospital and Provider Operations
(Emergency Repealer)


RELATES TO: 42 U.S.C. 1396a
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE DATE: June 16, 2008

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NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Kentucky Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or otherwise, prescribed by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation repeals 907 KAR 1:013, Payments for hospital inpatient services, which is no longer needed because the reimbursement methodology for inpatient hospital services is established in three (3) other administrative regulations. 907 KAR 1:615 establishes per diem inpatient hospital reimbursement provisions, 907 KAR 1:820 establishes prospective hospital distribution provisions and 907 KAR 1:825 establishes diagnosis-related group inpatient hospital reimbursement provisions.

Section 1. 907 KAR 1:013, Payments for hospital inpatient services is hereby repealed.

ELIZABETH A. JOHNSON, Esq., Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 16, 2008 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2008 at 8 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman, Complaints Room Located on the First Floor at 1E-B; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2008, 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 September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen (502) 564-6204
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation is being repealed.
(b) The necessity of this administrative regulation: This administrative regulation is being repealed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being repealed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation is being repealed
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being repealed.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is being repealed.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Not applicable, this administrative regulation is being repealed.
(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. Not applicable, this administrative regulation is being repealed.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Not applicable, this administrative regulation is being repealed.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Not applicable, this administrative regulation is being repealed.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Not applicable, this administrative regulation is being repealed.
(b) On a continuing basis: Not applicable, this administrative regulation is being repealed.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable, this administrative regulation is being repealed.
(7) Provide an assessment of whether an increase in fees or additional government expenditures is necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable, this administrative regulation is being repealed.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable, this administrative regulation is being repealed.
(9) Tiering: Is tiering applied? This administrative regulation is being repealed.

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? Not applicable, this administrative regulation is being repealed.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Not applicable, this administrative regulation is being repealed.
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? Not applicable, this administrative regulation is being repealed.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable, this administrative regulation is being repealed.
(c) How much will it cost to administer this program for the first year? Not applicable, this administrative regulation is being repealed.
(d) How much will it cost to administer this program for subsequent years? Not applicable, this administrative regulation is being repealed.
Note: This 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.

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VOLUME 35, NUMBER 2 – AUGUST 1, 2008

STATEMENT OF EMERGENCY
922 KAR 1:360E

This emergency administrative regulation is necessary to prevent the loss of federal and state funds supporting child welfare and public assistance programs within the Cabinet for Health and Family Services, Department for Community Based Services. Effective July 1, 2007, private child care provider reimbursement rates for the care of children in State custody were increased through the biennium budget bill for State Fiscal Year 2008. Funding for the increased reimbursement rates was to end on June 30, 2008. Additional funding was appropriated during the 2008 legislative session for the next biennium budget and will allow the cabinet to maintain the increased reimbursement rates for children in state custody, being cared for by private child care providers. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the private child care provider reimbursement rates, work within the confines of the cabinet’s current year and upcoming biennium appropriations, and avoid jeopardizing other child welfare and public assistance programs offered through the Cabinet for Health and Family Services. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANICE MILLER, Secretary
PATRICIA R. WILSON, Commissioner

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:360E. Private child care placement, levels of care, and payment.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

EFFECTIVE: June 30, 2008

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. 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-care 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 KRS 199.011.
(2) "Child-caring facility" or "facility" is defined by 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 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 Inter-agency Referral Form;
(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 1-5 (Achenbach); or
(11) "Model program cost analysis" is defined by 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 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; and
(b) For an initial or reassigned level of care;
(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 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 pri-
private child care residential placement; or
2. 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
(6) Maintain a confidential information system for each child
eyserved 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 care arrangements;
(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 occasional violent act;
(b) May have superficial or fragile interpersonal relationships;
(c) Requires supervision in a structured, supportive environ-
ment 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 re-
lapse; 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; and
(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 super-
vision; or
2. Specialized setting that provides safe and effective care for
a severe, chronic medical condition, behavioral disorder, or emo-
tional 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 facil-
ty, based upon the model program cost analysis defined at KRS
199.641(1)(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.
(a) The factor shall be determined as follows:
1. Based on the amount of treatment provided at each level of
care; and
2. By determining the median of:
   a. Number of daily treatment hours, derived from time study
data, provided to children served by private, nonprofit child-caring
facilities; and
   b. Level of care of children served by private, nonprofit child-
caring facilities that contract with the cabinet;
(3) 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 propor-
tionate to the amount of treatment provided to a child in the median level.
(3) A statewide median cost, including board, care, and treat-
ment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treat-
ment 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.
(5)(a) To the extent funds are available, an incentive payment
for a private 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 child-caring facility
shall specify:
1. Indicators used to measure the performance outcomes de-
scribed 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 child-caring facility during the contract period shall be in-
cluded in the percentage of children for whom the cabinet expects
achievement of an outcome.
(d) At the time the contract period expires, each private 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
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.

(f) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private 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) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(g) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:
   (a) Reduced length of stay in out-of-home placement;
   (b) Increased safety from child abuse or neglect;
   (c) Increased number of children moving into and remaining in permanent placement;
   (d) Increased number of children and their families cared for in close proximity to their home communities;
   (e) Increased number of children reunified with their families;
   (f) Increased accountability for success in after care; or
   (g) Decreased reunification 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) dollars and nineteen (19) cents;
   (b) Level II - sixty-one (61) dollars and fifty-two (52) cents;
   (c) Level III - $105.71;
   (d) Level IV, $151.03;
   1. Effective July 1, 2007 through June 30, 2008, and
   (f) Level V - $210.64;

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;
   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 per day for a child-caring facility with a treatment license;
   2. Ninety (90) 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 per day; and
   (c) Adhere to the child’s individual treatment plan.

(3) 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 per day; and
   3. Adhere to the child’s individual treatment plan.

Section 8 Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be forty-three (43) dollars.

(2) The 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) dollars.
   (b) Level III - seventy-nine (79) dollars and seventy-eight (78) cents.
   (c) Level IV - ninety-seven (97) dollars and eleven (11) cents.
   (d) Level V - $134.25.

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) 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. (1) A child-caring facility or child-placing agency shall:

   (a) Inform the department of the levels of care the facility or agency has the ability to serve;
   (b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

      1. Room, board, and other activity contributing to housing, food, clothing, shower supplies, or personal incidentals;
      2. Clinical services including:
         a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and
         b. 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
      3. Support services that:
         a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
         b. Allow a child to cope with the disability or distress;
         c. Provide access to improving the educational or vocational status of the child, and
   d. Provide essential elements of daily living;
   (c) Submit the following reports to the gatekeeper in time for the report to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

      1. For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child’s developmental level consisting of completed forms:
         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) (Achenbach), every six (6) months; and
      2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child’s developmental level consisting of a completed Reiss Scales for Children’s Dual Diagnosis (Mental Retardation and Psychopathology) by the first utilization review due date and every twelve (12) months thereafter; and

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3. To the gatekeeper and designated cabinet staff, a copy of the following completed forms:
   a. 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
   b. On a semi-annual basis for a foster care placement, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment;
   c. Provide outcomes data and information as requested by the gatekeeper; and
   d. 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:
      1. The Council on Accreditation; or
      2. The Joint Commission on Accreditation for Healthcare Organizations.
   (2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-care facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) 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-care facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) 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;
      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-care facility makes timely submission of the reports, and if the:
      a. Level of care remains unchanged, payments shall continue unchanged;
      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-care 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-care 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(1)(c) 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-care facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-care facility, 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-care facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-care facility, 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 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;
      3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notes 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. 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-care facility, 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-care facility or child-placing agency submitting the following within thirty (30) days of the placement:
      1. A cover letter requesting a reassessment;
      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. 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-care facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-care 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 accor-
dance 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 582 KAR 1:220.

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 6/08/7/07;
   (j) "DPP-886, Private Child Care Client Interagency Referral Form", edition 10/04;
   (k) "DPP-866A, 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) "Rass Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990.
(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.

PATRICIA R. WILSON, Commissioner
APPROVED BY AGENCY: June 6, 2008
FILED WITH LRC: June 30, 2008 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, Regulation Coordinator
(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 procedures 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 fiscal responsibility statute: This administrative regulation conforms to KRS 194A.050(1), 199.541(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: Effective July 1, 2007, private child care provider reimbursement rates for the care of children in state custody were increased through the biennial budget bill for State Fiscal Year 2008 or HB 380 2006 GA. Funding for the enhanced reimbursement rates will sunset on June 30, 2008. The amendment to this administrative regulation continues the enhanced reimbursement rates and ensures compliance with the enacted budget for the upcoming biennium, HB 406 2008 GA.
   (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure continuation of the enhanced private child care provider reimbursement rates and compliance with the enacted budget for the upcoming biennium, HB 406 2008 GA. Funding through the next budget biennium was specifically earmarked during the 2006 legislative session for the continuation of the enhanced private child care provider reimbursement rates for children in state custody. The enhanced private child care provider reimbursement rates promote the health, safety, and welfare of children in state custody through placement stability.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by continuing enhancements to private child care provider reimbursement rates as earmarked in HB 406 2008 GA. The enhanced private child care provider reimbursement rates promote the safety, health, and welfare of children in State custody in said placements.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing private child care provider reimbursement rates congruent with the provisions of HB 406 2008 GA and by promoting placement stability for children in state custody.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 55 private child care providers who hold an agreement with the cabinet for placement for various types of placement. As of May 2008, there were 1,121 children whose private child care providers received the enhanced reimbursement rates for the children’s care.
(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 an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not need to take any action to comply with the amendments to this administrative regulation.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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 continue to receive the enhanced reimbursement rates for emergency shelter and Level IV and V residential care as originally provided in HB 380 2006 GA and continued by HB 406 2008 GA.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: $8,060,514
   (b) On a continuing basis: $8,060,514
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title
IV-E, Medicaid Rehabilitation (restricted), 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 and, if so, by what amount? HB 406 2008 GA earmarked funds for the continued enhancement to the private child care provider rates through the next budget biennium, State Fiscal Years 2009-2010.

(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 increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Cabinet for Health and Family Services, Department for Community Based Services.

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), 199.841(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 not generate any 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? This administrative regulation will not generate any revenue for any subsequent year.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will cost $8,060,514 in its initial year.

(d) How much will it cost to administer this program for subsequent years? Based on current data, the amendment to this administrative regulation will cost $8,060,514 for each subsequent year.

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. 42 U.S.C. 672, OMB Circular A-122.

2. State compliance standards. KRS 194A.050(1), 199.841(4), 605.090(1)(d), 605.150(1).


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.
PERSONNEL BOARD
(As Amended at ARRS, July 8, 2008)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), 18A.075(1)(1), (4), 18A.115(4)
STATUTORY AUTHORITY: KRS 18A.075
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.075(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement and reemployment. KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service. This administrative regulation establishes the method for determining an employee’s work station and the requirements governing a demotion, transfer, or reinstatement of an employee.

Section 1. Definitions. “Class series” means a group of positions that are similar as to the duties performed and have:

(1) Varying levels of:
(a) Discretion;
(b) Responsibility; and
(c) Minimum requirements of training, experience, or skill; and
(d) Schedule of compensation that are commensurate with minimum requirements.

Section 2. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.
(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee’s current position.
(3) Except as provided by Sections 3, 4, and 5 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his work station if the:
(a) Site is within the county of employment; and
(b) Assignment is not a transfer, demotion, or reinstatement.

Section 3. Demotion. (1) A demotion for cause shall be intra-agency.
(2) Voluntary demotion.
(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer or Voluntary Demotion Form prescribed by the Personnel Cabinet.
(b) The form shall include:
1. A statement of the reason for the request;
2. The effective date of the demotion;
3. The position from which he requests demotion;
4. The position to which he will be demoted; and
5. A statement that the employee waives his right to appeal the demotion.
(c) The employee shall forward a copy of the request to the Secretary[Commissioner] of Personnel.
(3) A voluntary demotion shall be interagency or intra-agency.

Section 4. Transfers. (1) The transfer of an employee with status shall conform to the requirements established in this section.
(2) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.
(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.
(3) Involuntary transfer, same county.
(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.
(b) The notice shall state the:
1. Employee has been selected for transfer;
2. New work station;
3. Reason for the transfer;
4. Employee is required to report to the new work station;
5. Effective date of the transfer; and
6. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.
(c) A copy of the notice shall be forwarded to the Secretary[Commissioner] of Personnel.
(d) An employee shall report to the new work station upon the date specified in the notice.
(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:
(a) An employee shall be entitled to travel and moving expenses as provided by 200 KAR 2.006;
(b) An employee shall receive a written notice of involuntary transfer at least thirty (30) days prior to the effective date of the transfer;
(c) The notice shall contain:
1. The information specified in subsection (3)(b) of this section; and
2. A statement that the employee is entitled to:
   a. Reimbursement of travel expenses incurred within thirty (30) days of the effective date of the notice; and
   b. Moving expenses, if any.
(5) An involuntary transfer shall be intra-agency.
(6) Voluntary transfer.
(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer or Voluntary Demotion Form prescribed by the Personnel Cabinet.
(b) The form shall include:
1. A statement of the reason for the request;
2. The effective date of the transfer;
3. The position, including identifying number, from which he requests a transfer;
4. The position, including identifying number, to which he requests a transfer; and
5. A statement that the employee waives his right to appeal the transfer.
(c) The employee shall forward a copy of the request to the Secretary[Commissioner] of Personnel.
(7) A voluntary transfer shall be interagency or intra-agency.

Section 5. Reinstatement. (1) A request for reinstatement shall be submitted by [approved if it has been]:
(a) Made at the request of the appointing authority to the secretary of Personnel [i]; and
(b) Approved by the Commissioner of Personnel.
(2) The request[Approval] shall include a finding that the candidate for reinstatement:
(a) Meets the current qualifications for the job classification to which he is being reinstated; and
(b) Has previously held status at that grade level or higher.
(3) If the reinstatement is to a classification outside of the classification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.
(4) The request for reinstatement shall contain a copy of the board’s order ordering reinstatement, if applicable.

Section 6. Written Reprimand. (1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee’s official personnel file after a period of three (3) years.
(a) An employee’s request shall not be granted if the employee
has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee, and be dated and signed, and
2. Include the following information:
   a. The employee's current position, agency, work phone number, and work address;
   b. The employee's immediate supervisor at the time of the petition for removal;
   c. [If the employee seeks to remove a reprimand that was issued while working in a position other than the employee's current position, add:
      d. The date the written reprimand was issued;
      e. [A statement by the employee that he has not received any disciplinary actions (written or oral) or written reprimand or suspension in the three (3) years prior to the petition; and
      f. [A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided a copy of the petition to the employee's current employing authority, and that the employee has been provided a copy of the petition to the employee's current employing authority, and that the employee has been provided a copy of the petition to the employee's current employing authority, and that the employee has been provided a copy of the petition to the employee's current employing authority, and that the employee has been provided a copy of the petition to the employee's current employing authority, and that the employee has been provided a copy of the petition to the employee's current employing authority, and that the employee has been provided a copy of the petition to the employee's current employing authority.
   c. The petition for removal shall be mailed by first-class mail or hand-delivered to the office of the Personnel Cabinet Secretary.
   d. A petition for removal of a written reprimand shall be subject to the approval of the Personnel Cabinet Secretary.

   (a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) days of receipt of the petition.

   (b) Upon receipt of a written reprimand, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

   (c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

   (d) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as follows:

   (a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.

   (b) The Office of Legal Services shall maintain the document as confidential work-product materials for the availability or use in any future legal proceeding.

   (c) If no legal proceeding has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

   (d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

   The employing agency shall notify the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.


(2) It may be inspected, copied, or obtained at the Personnel Cabinet, Room 531, 5th Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. SIPEK, Executive Director
APPROVED BY AGENCY: March 28, 2008
FILED WITH LRC: March 28, 2008 at 2 p.m.
CONTACT PERSON: Mark A. Spek, Executive Director, Personnel Board, 26 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693.

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(As Amended at ARRS at July 8, 2006)

201 KAR 19:210. Retired and inactive status.

RELATES TO: KRS 322.100, 322.160(1), 322.290(15), (16)

STATUTORY AUTHORITY: KRS 322.100, 322.110(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 requires the board to establish license fees for engineers and land surveyors by administrative regulation. KRS 322.110(3) requires the board to promulgate administrative regulations for inactive or retired status engineers and land surveyors. This administrative regulation establishes the registration and renewal fee and professional development requirements for retired or inactive engineers and land surveyors. [authorizes the board to establish registration fees for engineers and land surveyors by administrative regulation. The function of this administrative regulation is to establish the registration and renewal fee and professional development requirements for retired or inactive engineers and land surveyors.]

Section 1. (1) A professional engineer [or professional land surveyor] may be registered as a "professional engineer, retired" or "professional engineer, inactive," and a professional land surveyor may be registered as a "professional land surveyor, retired" or "professional land surveyor, inactive." [The board approves his request for registration; and]

[2] The applicant shall:

(a) [If the board approves his request for registration; and]

(b) The board approves his request to use that designation; and

(c) He meets the requirements of Section 2 of this administrative regulation.

(2) A professional engineer or professional land surveyor may be registered as a "professional engineer, inactive," or "professional land surveyor, inactive," or both, if he:

(a) Chooses not to engage in the practice of engineering or land surveying in the state for an indefinite period of time;

(b) Seeks to return to practicing in the future; and

(c) Meets the requirements of this administrative regulation.

Section 2. Requirements and Prohibitions. An applicant for inactive or retired registration shall:

(1) Pay a biennial fee of twenty (20) dollars.

(2) Renew the registration in accordance with KRS 322.160; and

(3) If the professional engineer or professional land surveyor does not practice [or offer to practice] the profession, in order to remain inactive or retired, the applicant shall comply with KRS 201 KAR 19:210(2), (3), and (4).

(4) Obtain board approval for reinstatement to active registration.

Section 2. (3) Professional Development Program. (1) Except as required by subsection (1), [board or] and (2) [of this section], an inactive or retired registrant shall not be required to complete professional development hours.

(2) [If an inactive or retired professional land surveyor seeks reinstatement to active registration, he shall,] prior to reinstatement, complete eight (8) professional development hours for each calendar year of the inactive or retired status, up to a maximum of thirty-two (32) [professional development hours].

(3) An inactive or retired professional engineer shall, prior to reinstatement, complete fifteen (15) professional development hours for each calendar year of inactive or retired status, up to a maximum of sixty (60) professional development hours.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: May 14, 2006
FILED WITH LRC: May 24, 2006 at 4 p.m.
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) 573-6887.
GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 8, 2008)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 214.615, 314.041[41]-[43], 314.051[31]-[32], 314.470
STATUTORY AUTHORITY: KRS 314.041[21], 314.051[31], 314.131[11]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131[11] authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041[21] requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314 051[31] requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:
(a) Submit:
1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);
2. The licensure application fee as established in 201 KAR 20:240;
3. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
4. A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
5. A letter of explanation that addresses each conviction if applicable;
(b) Notify the board as soon as a new address is established after submitting the application,
(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;
(d) When taking the examination, abide by and cooperate with security procedures adopted by the board;
(e) Apply to take and pass the National Council Licensure Examination; and
(f) Meet the requirement for completion of an educational course on the human Immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615[21].

An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of applicant's exam or the provisional license expires, whichever comes first.

(3) The name of the applicant shall appear on the "[3]Certified List of Kentucky Program of Nursing Graduates" as established in 201 KAR 20:260, the "[3]Certified List of Out-of-state Program of Nursing Graduates," or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The "[3]Certified List of Out-of-state Program of Nursing Graduates[11] shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may reattempt the examination after meeting the requirements of Section 1 of this administrative regulation.
(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:
(1) The candidate;
(2) Other state boards of nursing;
(3) The National Council of State Boards of Nursing, Inc.;
(4) The candidate's program of nursing; and
(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Clinical Internship. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.
(2) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met.
(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4) are met.
(3) To be eligible for a clinical internship, the applicant shall hold a current provisional license.
(4) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (5) of this section or paragraph (b) or (c) of this subsection apply.
(b) If the applicant passes the NCLEX but has not completed the clinical internship prior to the expiration of the provisional license, the applicant must meet the requirements of Section 1(1)(a), (b), (c), and (d) of this administrative regulation.
1. A new provisional license shall be issued;
2. The applicant shall complete the clinical internship, but does not need to retake the NCLEX.
3. Regardless of any hours that may have been completed under the first provisional license, the applicant shall complete 120 hours under the new provisional license.
(c) If the applicant fails the NCLEX and has not completed the clinical internship, the provisional license shall be voided. The applicant shall meet the requirements of Section 1(1)(a) through (b), (c), (d), and (e) of this administrative regulation as applicable.
2. A new provisional license shall be issued after the applicant passes the NCLEX, at which time the applicant shall complete the clinical internship.
3. Regardless of any hours that may have been completed under the first provisional license, the applicant shall complete 120 hours under the new provisional license.
(d) If the applicant fails the NCLEX and has completed the clinical internship, the provisional license shall be voided.
1. The applicant shall meet the requirements of Section 1(1)(a) through (b), (c), (d), and (e) of the administrative regulation as applicable.
2. The applicant does not need to complete the clinical internship again.
(e) If the applicant does not take the NCLEX and does not complete the clinical internship prior to the expiration of the provisional license, the applicant shall meet the requirements of Section 1(1)(a) through (b), (c), (d), and (e) of the administrative regulation as applicable, and if a new provisional license shall be issued under the provisions of this section.
(5) A person with a temporary physical or mental disability to complete the clinical internship shall:
(a) Complete the [3]Petition to Hold Provisional License in Abeyance[3]; and
(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.
(6)(a) If the Petition to Hold Provisional License in Abeyance is granted, the current provisional license shall be void and shall be immediately returned to the board.
(b) The person whose petition has been granted shall not engage in nursing practice.
(7)(a)1. A person whose petition has been granted shall submit a written request to the board to reassess the provisional license once [when] the temporary physical or mental inability has been resolved.
2. The request shall include the name, address, telephone number, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental capability has been resolved.

4. The person shall also submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System, if the previous one (1) is more than six (6) months old.

(b) Upon submission of the required documentation and approval by the board, the board shall reissue the provisional license for six (6) months.

(c) If the required documentation is submitted more than one (1) year from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(b) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically. It shall include the following:
   (a) Name, address, telephone number, Social Security number, and date of birth of the applicant;
   (b) Provisional license number;
   (c) Name, address and telephone number of the facility where the clinical internship was completed; and
   (d) Name of the supervising nurse.

9. To qualify as "direct supervision" under KRS 314.041(5) and 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant is engaged in the clinical internship.

10. The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

11.(a) An applicant may take the NCLEX examination anytime after being made eligible and may also complete the clinical internship at the same time.

(b) However, if the applicant has failed the NCLEX examination as a result of an application for licensure in a jurisdiction other than Kentucky, a provisional license to complete the clinical internship shall not be issued until the applicant has passed the NCLEX examination.

12. If the applicant fails the examination, the provisional license shall be void and shall be immediately returned to the board.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).

2(a) Prior to applying [making application] for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course.

(b) The applicant shall return the registered nurse provisional license, if applicable.

(b) The program of nursing shall seek approval of the course from the board.

4. The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.

5. At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.

6. The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

7. After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

2. The board may request that an applicant provide evidence of the applicant's [his] state of residence.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", (2/06), Kentucky Board of Nursing;

(b) "Petition to Hold Provisional License In Abeyance," (8/04), Kentucky Board of Nursing; and

(c) "Certified List of Out of State Program of Nursing Graduates", (2/06), Kentucky Board of Nursing.

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President
APPROVED BY AGENCY: April 24, 2008
FILED WITH LRC: May 5, 2008 at 10 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, KY 40223, phone (502) 429-3309, fax (502) 699-3538, email nathan.goldman@ky.gov

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, July 8, 2008)


STATUTORY AUTHORITY: KRS 224.16-050, 33 U.S.C. 1341
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050 authorizes the cabinet to certify pursuant to 33 U.S.C. 1341 that applicants for a federal permit regarding the construction or operation of facilities, which may result in a discharge of dredged or fill material into the waters of the Commonwealth, as defined in KRS 224.01-010(33), shall comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 [et seq]. This administrative regulation establishes the procedures for public notice of Section 401, Individual Water Quality Certifications. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation is not more stringent than the federal counterpart.

Section 1. Public Notice. (1) The cabinet shall give public notice of receipt of an administrative complete application for a Section 401 Individual Water Quality Certification.

(a) An administrative complete application shall contain the information necessary to allow a meaningful review of the
project based on its merits.

1. An applicant for a project relating to surface mining coal operations shall submit the Application for Water Quality Certification for Surface Coal Mining Activities.

2. All other applicants seeking certification shall submit the Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification.

(b) If an application is incomplete, a notice shall be sent to the applicant indicating the areas of the application that are deficient.

(Section 401 Individual Water Quality Certification public notices may describe more than one (1) certification or action and may be a part of other public notices under the Federal Water Pollution Control Act, 33 U.S.C. 1251-1287 [as amended].)


(2) The cabinet shall give public notice to:

(a) An applicant or person who has requested an electronic copy of Section 401 Individual Water Quality Certification public notices; and

(b) An applicant or person who has requested to be notified by standard mail of Section 401 Individual Water Quality Certification public notices, by one (1) of the following methods:

(a) By electronically mailing a copy of the notice to the following persons:

1. The applicant;

2. All persons who have requested copies of Section 401 Individual Water Quality Certification public notices; or

(b) By mailing a copy of the notice to anyone listed in subsection (2)(a)2 of this section who has requested to be notified by standard mail.

Section 3. Content. A public notice shall contain at least the following information:

(1) The name and address of the applicant and, if different, the address or location of the activity regulated by the certification;

(2) The name, address, and telephone number of the applicant or applicant's representative to contact for further information;

(3) A brief description of the comment procedures, including deadlines;

(4) A brief description of the proposed activity and its purpose;

(5) The location of the waters of the Commonwealth affected by the proposed activity; and

(6) The location and availability of the application for public inspection.

Section 4. Public Comment. (1) The public comment period shall expire thirty (30) days from the date of the public notice.

(2) The cabinet shall consider comments prior to making a final determination on a certification.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Water Quality Certification for Surface Coal Mining Activities", Form DNR-WQC, July 2006 [February 2006].

(b) "Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification", July 2006 [June 2006] [January 2004].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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(3) A generator shall not offer [his] hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(4)(a) Hazardous waste generation and on-site management of hazardous waste shall be consistent with the submitted registration.

(b) A modified [Form] Notification of Hazardous Waste Activity Form [2], DEP 7037, shall be submitted if [any] Information submitted on the original or existing notification form changes. These modifications may include [any] changes in waste streams, on-site management methods, the name of the contact person, or any other information required by the [submitted-on-the-2] Notice of Hazardous Waste Activity Form.

(c) The registrant shall [timely] file a modified registration form with the cabinet—A required modification shall be considered timely filed if it is received by the cabinet not later than thirty (30) days following the change requiring the submission of the modification.

(5)(a) Hazardous waste generators that no longer generate hazardous waste on site, close their facility, or go out of business shall notify the cabinet in writing within thirty (30) days after the generation of hazardous waste ceases.

(b) This notification shall be submitted on the Request to be Removed from the Hazardous Waste Handler List, DEP 7086.

Section 4. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) Notification of Hazardous Waste Activity Form, DEP Form 7037, March 2006 (July 2006); and

(b) Request to Be Removed from the Hazardous Waste Handler List, DEP Form 7066, [August 1999].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Hazardous Waste Branch, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, Monday through Friday, 8 a.m. until 4:30 p.m.

(3) These documents may also be obtained from the Division of Waste Management's Web page located at www.waste.ky.gov.

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 14, 2008
FILED WITH LRC: April 14, 2008 at 1 p.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARR5, July 8, 2008)

401 KAR 32:050. Special conditions.


STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510(1) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation establishes procedures to implement provisions of KRS 224.46-510 and to establish special conditions for generators who export or import hazardous waste. This administrative regulation is equivalent to corresponding federal requirements except an annual report is required rather than a biennial report.

Section 1. Definitions. The following definitions apply [apply] to Sections 2 through 9 of this administrative regulation:

(1) "Administrator" is defined by 40 C.F.R. 260.10.
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Relly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4043, email Tony.Hatton@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Division of Waste Management
(As Amended at ARRS, July 8, 2008)

401 KAR 34:005. Definitions for 401 KAR Chapter 34.


STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530, 40 C.F.R. 260.10

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) [222.10(30)] authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation defines essential terms that are used in 401 KAR Chapter 34. Some federal terms have been modified to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 34.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 260.10, effective September 9, 2005, shall apply.

1. "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

2. "100-year floodplain" means a land area that is subject to a one (1) percent or greater chance of flooding in any given year from any source.

3. "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

4. "Administrative "agency," "assistant administrator," "regional administrator," "director," or "regional director" means the Energy and Environmental Cabinet, pursuant to EO 2008-507 and 2008-531, effective June 16, 2008 (cabinet as defined in KRS 224.01-010(9)).

5. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

6. "Bodily injury" is defined by 40 C.F.R. 264.141(g).

7. "Cabinet" is defined by KRS 224.01-010(9), and EO 2008-507 and 2008-531 reorganized the Environmental and Public Protection Cabinet as the Energy and Environmental Cabinet, effective June 16, 2008.

8. "Certificate" is defined by KRS 224.46-810(2).

9. "Closure" is defined by KRS 224.01-010(4).

10. "Closure plan" means the plan for closure prepared in accordance with the requirements of 401 KAR 34 070, Section 3, or 401 KAR 35.070, Section 3.

11. "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

12. "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

13. "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed if a fire, explosion, or release of waste or waste constituents into the environment has the potential for endangering human health and the environment and includes financial planning to identify resources for initiation of the course of action.

14. "Corrective action management unit" or "CAMU" means an area within a facility that:
   (a) is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under 401 KAR 34:060, Section 12, and KRS 224.46-520; and
   (b) Shall only be used for the management of remediation wastes pursuant to implementing the corrective action requirements at the facility.

15. "Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

16. "Closing closure cost estimates" means the most recent of the estimates prepared in accordance with 401 KAR 34:005, Section 1(1), (2), and (3), or 401 KAR 35:000, Section 1(1), (2), or (3).

17. "Current liabilities" is defined by 40 C.F.R. 264.141(f).

18. "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 C.F.R. 144.62(a), (b), and (c).

19. "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with 401 KAR 34:100, Section 1(1), (2), and (3) or 401 KAR 35:100, Section 1(1), (2), or (3).

20. "Displacement" means the relative movement of any two sides of a fault measured in any direction.

21. "Disposal" is defined by KRS 224.01-010(10).

22. "EPA" means the Environmental Protection Agency or "EPA" means the Kentucky Department for Environmental Protection except as used in the phrase "EPA identification number", "EPA identification number", "EPA Region", "EPA Acknowledgment of Consent", "EPA Test Methods", and "publication".

23. "Existing" means a boiler or industrial furnace that on or before August 21, 1991 was either in operation burning or processing hazardous waste, or for which construction (including the ancillary facilities to burn or process the hazardous waste) has commenced.

24. "Face amount" means the total amount the insurer is obligated to pay under the policy.

25. "Fault" means a fracture along which rocks on one (1) side have been displaced with respect to those on the other side.


27. "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

28. "Generator" is defined by KRS 224.01-010(13).

29. "Hazardous constituent" is defined by KRS 224.01-010(42).

30. "Hazardous waste" is defined by KRS 224.01-010(31)(b).

31. "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or another method and includes boiler, disposal facility, elementary neutralization unit, incinerator, industrial furnace, hazardous waste transfer facility, injection well, landfill, land treatment facility, miscellaneous unit, pile or waste pile, replacement unit, storage facility, sludge dryer, surface impoundment, tank, thermal treatment facility, totally enclosed treatment facility, treatment facility, or wastewater treatment unit.

32. "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

33. "Independent audit" means an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

34. "Industrial solid waste" is defined by KRS 224.01-010(31)(a)(3).

35. "Inherently safe" means the designation of a hazardous waste site or facility that which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 36 and is treated as having a permit until final admin-
ISTRATIVE DISPOSITION OF THE APPLICATION IS MADE.

[36][37] "Land disposal" is defined by KRS 224.01-010(43).

[37][38] "Legal defense costs" means [any] expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

[38][39] "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

[39][40] "Manifest" is defined by KRS 224.01-010(37).

[40][41] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

[41][42] "Montoring well" means a well used to obtain water samples for water quantity and quantity analysis and groundwater levels.

[42][43] "Municipal solid waste" is defined by KRS 224.01-010(3)(a)(4).

[43][44] "Net working capital" means current assets minus current liabilities.

[44][45] "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

[45][46] "New facility" means a hazardous waste site or facility that commenced construction after November 19, 1980.

[46][47] "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

[47][48] "Off-site" means properties noncontiguous to the site.

[48][49] "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

[49][50] "Owner" means any person who owns an on-site or off-site waste facility or any part of a facility.

[50][51] "Parent corporation" means a corporation that [which] directly owns at least fifty (50) percent of the voting stock of the corporation, which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

[51][52] "Permit" means the authorization or other control document that:

(a) is issued by the cabinet to implement the requirements of the waste management administrative regulations, 401 KAR Chapters 30 through 49;

(b) includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit; and

(c) Does not include draft permit or proposed permit.

[52][53] "Person" is defined by KRS 224.01-010(17).

[53][54] "Point of compliance" means a hazardous waste sites and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

[54][55] "Polychlorinated biphenyl" or "PCB" means halogenated organic compounds defined in accordance with 40 C.F.R. 761.3 effective June 24, 1999.

[55][56] "Postclosure care" means the manner in which a facility shall be maintained if it no longer accepts waste for disposal.

[56][57] "Postclosure monitoring and maintenance" is defined by KRS 224.01-010(18).

[57][58] "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of 401 KAR 34:070, Sections 6 to 11 or 401 KAR 35:070, Sections 8 to 11.

[58][59] "Professional engineer" is defined by KRS 224.01-010(3).

[59][60] "Professional land surveyor" is defined by KRS 322.010(9).

[60][61] "Property damage" is defined by 40 C.F.R. 264-141(g).

[61][62] "Publicly owned treatment works," or "POTW" is defined by KRS 224.01-010(19).

[62][63] "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1993.

[63][64] "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 waste facility or activity.

[64][65] "Solid waste" is defined in KRS 224.01-010(31)(a).

[65][66] "Solid waste management unit" means [any] discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of municipal or hazardous waste and includes any area at a facility at which solid wastes have been routinely and systematically released.

[66][67] "Slate" means the Commonwealth of Kentucky.

[67][68] "Storage" is defined by KRS 224.01-010(28).

[68][69] "Substantial business relationship" is defined by 40 C.F.R. 264.141(h) as the extent of a business relationship necessary to maintain a guarantor contained issued bond to the relationship valid and enforceable. A "substantial business relationship" that arises from a pattern of recent or ongoing business transactions in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Cabinet.

[69][70] "Sudden accidental occurrence" means an occurrence that which is not continual, or repeated in nature.

[70][71] "Tangible net worth" means the tangible assets that:

(a) Remain after deducting liabilities; and

(b) Do not include intangibles such as goodwill and rights to patents or royalties.

[71][72] "Termination" is defined by KRS 224.01-010(26).

[72][73] "The full amount of liability coverage to be provided" means the amount of contribution and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

[73][74] "Transfer Facility" is defined by KRS 224.01-010(48).

[74][75] "Transportation" is defined by KRS 224.01-010(29).

[75][76] "Treat" is defined by KRS 224.01-010(50).

[76][77] "United States" means the Commonwealth of Kentucky.

[77][78] "Used oil" is defined by KRS 224.50-545(2)(a).

[78][79] "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

[79][80] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

[80][81] "Waste pile" or "pile" means [any] noncontaminated accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

[81][82] "Water" or "waters of the Commonwealth" is defined by KRS 224.01-010(33).

Section 2. Substitution of Federal References. (1) The following federal parts and subparts, which are cited by federal regulations referenced in 401 KAR Chapter 34, shall be substituted with the state administrative regulations listed below.

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STATUTORY AUTHORITY: KRS 224.46-505, 224.46-520
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Environmental and Public Protection Cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the general financial requirements for owners and operators of hazardous waste site facilities. To implement provisions of KRS 224.46-505 and 224.46-520 and to establish general financial requirements. Additionally, this administrative regulation supersedes and replaces the following: 401 KAR 34.140, Wording of the instrument for trust funds; 401 KAR 34.144, Wording of the instrument for a surety bond guaranteeing payment into a trust fund; 401 KAR 34.146, Wording of the instrument for a surety bond guaranteeing performance; 401 KAR 34.166, Wording of the instrument for a letter of credit; 401 KAR 34.166, Wording of the instrument for a certificate of insurance; 401 KAR 34.165, Wording of the instrument for financial test on closure or postclosure care, 401 KAR 34.162, Wording of the instrument for financial test on liability coverage and closure or postclosure care; 401 KAR 34.166, Wording of the instrument for a financial test on liability coverage and closure or postclosure care; 401 KAR 34.165, Wording of the instrument for a financial test on liability coverage and closure or postclosure care; 401 KAR 34.165, Wording of the instrument for a financial test on liability coverage and closure or postclosure care; 401 KAR 34.166, Wording of the instrument for a financial test on liability coverage and closure or postclosure care; 401 KAR 34.165

Section 1. Financial Requirement Definitions. The definitions previously found in this section have been relocated to the definition administrative regulation for this chapter, which is 401 KAR 34.005.

Section 2. Applicability. (1) The requirements of 401 KAR 34.090 to 34.140 apply to owners and operators of all hazardous waste site facilities, except as provided otherwise in this section or in 401 KAR 34.010, Section 1. (2) The requirements of 401 KAR 34.100 and 34.110 shall apply only to owners and operators of: (a) Disposal facilities; (b) Waste piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in 401 KAR 34.200, Section 7 and 34.210, Section 8(401 KAR 34.200, Section 6(401 KAR 34.210, Section 8(2) and (3)); (c) Tank systems that are required under 401 KAR 34.190, Section 8(Section 8 of 401 KAR 34.140) to meet the requirements of landfills; (d) Containment buildings that are required under 401 KAR 34.245, Section 2 to meet the requirements for landfills; and (e) Drip pads that are required under 401 KAR 34.285, Section 6 to meet the requirements for landfills.

States and the federal government are exempt from the requirements of Section 1 of this administrative regulation.

(4) The cabinet may replace all or part of the requirements of this administrative regulation applying to a regulated unit with alternative requirements for financial assurance established[set]out in the permit or in an enforceable document if believing the cabinet: (a) Prescribes alternative requirements for the regulated unit under 401 KAR 34.090, Section 1, or 401 KAR 34.070, Section 1 (as amended); (b) Determines that it is not necessary to apply the requirements of this administrative regulation because the alternative financial assurance requirements shall[will] protect human health and the environment; and (c) Provides for public notice and public comment in accordance with 401 KAR 38.050.

### Table: Federal Regulation vs State Regulation

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ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 14, 2008
FILED WITH LRC: April 14, 2008 at 1 p.m.
CONTACT PERSON. Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Really Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 8, 2008)

401 KAR 34:080. General financial requirements.


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Section 3. General Financial Requirements. (1) This administrative regulation and 401 KAR 34:090 to 34:130 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224:46-520(3) for hazardous waste sites or facilities. A reference to this section is a citation of this administrative regulation and 401 KAR 34:090 to 34:130.

(2) Except as specifically provided in this administrative regulation and 401 KAR 34:090 to 34:130, no variance (401 KAR 30.020, Section 2) or other waivers of these financial requirements shall be granted by the cabinet.

Section 4. Incorporation by Reference. (1) The following financial instruments are incorporated by reference:

(a) Trust Agreement for Closure and Postclosure Assurance, DEP Form 6035A, July 2008 (February 10, 1994);

(b) Financial Guarantee Bond to Demonstrate Closure and/or Postclosure Care, DEP Form 6035B, July 2008 (February 10, 1994);

(c) Corporate Guarantee for Closure or Postclosure Care, DEP Form 6035H, July 2008 (February 10, 1994);

(d) Letter from Chief Financial Officer to Demonstrate Assurance of Closure or Postclosure Care, DEP Form 6035F, February 10, 1994;

(e) Irrevocable Standby Letter of Credit for Closure and/or Postclosure Care, DEP Form 6035G, July 2008 (February 10, 1994);

(f) Irrevocable Standby Letter of Credit for Demonstrate Closure and/or Postclosure Care, DEP Form 6035J, July 2008 (February 10, 1994);

(g) Hazardous Waste Site or Facility Bond to Demonstrate Closure and/or Postclosure Care, DEP Form 6035L, July 2008 (February 10, 1994);

(h) Performance Bond to Demonstrate Closure and/or Postclosure Care, DEP Form 6035J, July 2008 (February 10, 1994);

(i) Letter from Chief Financial Officer to Demonstrate Liability Coverage or to Demonstrate Both Liability Coverage and Assurance of Closure or Postclosure Care, DEP Form 6035G, July 2008 (February 10, 1994);

(j) Corporate Guarantee for Liability Coverage, DEP Form 6035K (February 10, 1994);

(k) Hazardous Waste Facility Liability Endorsement, DEP Form 6035L (February 10, 1994);

(l) Certificate of Insurance for Closure or Postclosure Care, DEP Form 6035L (February 10, 1994);

(m) Certificate of Insurance for Closure or Postclosure Care, DEP Form 6035L (February 10, 1994);

(n) Irrevocable Standby Letter of Credit To Demonstrate Liability Coverage with Standby Trust Agreement, DEP Form 6035N, July 2008 (February 10, 1994);

(o) Standby Trust Agreement for Letter of Credit Demonstrating Liability Coverage, DEP Form 6035R, July 2008 (February 10, 1994);

(p) Payment Bond to Demonstrate Liability Coverage, DEP Form 6035O, July 2008 (February 10, 1994);

(q) Trust Agreement to Demonstrate Liability Coverage, DEP Form 6035P, July 2008 (February 10, 1994);

(r) Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage, DEP Form 6035O, July 2008 (February 10, 1994);

(s) Cover Letter for a Letter of Credit for Closure and/or Postclosure Care, DEP Form 6035S, July 2008 (July 1996).

(2) These forms may be obtained from the Hazardous Waste Branch, Division of Waste Management, 14 Rayleigh Road, Frankfort, Kentucky 40601, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Call (502) 564-6716 for assistance.

HANK LUST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Rayleigh Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-6049, email Tony.Hatton@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 8, 2008)

401 KAR 35:005. Definitions for 401 KAR Chapter 35.

RELATES TO: KRS Subchapters 224.01, 224.10, 224.46, 224.010, 40 C.F.R. 144.62(a), (b), (c), 260.10, 264.141, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30)(24-10-100(30) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations. EO 2008-507 and 2008-531, effective June 15, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation defines essential terms that are used in 401 KAR Chapter 35. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 35.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 260.10, effective September 9, 2005, shall apply.

(1) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) "Administrator," "agency," "assistant administrator," "assistant administrator for solid waste and emergency response," "regional administrator," "director," or "regional director" means the Energy and Environment Cabinet, pursuant to EO 2008-507 and 2008-531, effective June 16, 2008 (cabinet as defined in KRS 224.01-010(9)).

(3) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(4) "Bodily injury" is defined by 40 C.F.R. 264.141(g).

(5) "Cabinet" is defined by KRS 224.01-010(9), and EO 2008-507 and 2008-531 reorganized the Environmental and Public Protection Cabinet as the Energy and Environment Cabinet, effective June 16, 2008.

(6) "Certificate" is defined by KRS 224.46-810(2)

(7) "Closure" is defined by KRS 224.01-010(4).

(8) "Closure plan" means the plan for closure prepared in accordance with the requirements of 401 KAR 34:070, Section 3, or 401 KAR 35:070, Section 3

(9) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(10) "Contaminant" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(11) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed if a fire, explosion, or release of waste or waste constituents into the environment has the potential for endangering human health and the environment and includes financial planning to identify resources necessary for initiation of the course of action.

(12) "Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(13) "Current closure cost estimates" means the most recent of the estimates prepared in accordance with 401 KAR 34:090, Section 1(1), (2), and (3), or 401 KAR 35:090, Section 1(1), (2), or (3).

(14) "Current liabilities" is defined by 40 C.F.R. 264.141(I).

(15) "Current plugging and abandonment cost estimates" means
the most recent of the estimates prepared in accordance with 40
C.F.R. 144.62(a), (b), and (c).

(16) "Current postclosures cost estimate" means the most re-
cent of the estimates prepared in accordance with 401 KAR 34:100,
Section 1(1), (2), and (3), or 401 KAR 35:100, Section 1(1), (2), or (3).

(17) "Disposal" is defined by KRS 224.01-010(10).

(18) "Environmental Protection Agency" or "EPA" means the
Kentucky Department for Environmental Protection except if used in
the phrases "EPA hazardous waste number", "EPA identification
number", "EPA Region", "EPA Acknowledgment of Consent", "EPA Test
Methods", or "EPA publications".

(19) "Existing" means a boiler or industrial furnace that on or
before August 21, 1991, was either in operation, burning, or
processing hazardous waste or for which construction (including the
ancillary facilities to burn or to process the hazardous waste) has
commenced.

(20) "Face amount" means the total amount the insurer is obli-
gated to pay under the policy.

(21) "Federal Register" means the "Administrative Register of
Kentucky" as described in KRS 13A.650.

(22) "Fiscal year" means a twelve (12) month period for
accounting and other financial purposes.

(23) "Generator" is defined by KRS 224.01-010(13).

(24) "Hazardous constituent" is defined by KRS
224.01-010(42).

(25) "Hazardous waste" is defined by KRS 224.01-
010(31)(b).

(26) "Independently audited" means an audit was per-
formed by an independent certified public accountant in accoun-
ting with generally accepted auditing standards.

(27) "Industrial solid waste" is defined by KRS 224.01-
010(31)(a)(3).

(28) "Intersite means the designation of a hazard-
ous waste site or facility that[wheel] was in existence on
November 19, 1980, and has submitted a Part A application under 401
KAR Chapter 38 and is treated as having a permit until final adminis-
terative disposition of the application is made.

(29) "Liabilities means probable future sacrifices of eco-
nomic benefits arising from present obligations to transfer assets or
provide services to other entities in the future as a result of past
transactions or events.

(30) "Manifest" is defined by KRS 224.01-010(37).

(31) "Monitoring" means the act of systematically inspect-
ing the waste or waste collection parameters or on the quality of the
air, soil, groundwater, or surface water.

(32) "Net worth" means a well used to obtain water
samples for water quality and quantity analysis and groundwater
levels.

(33) "Municipal solid waste" is defined by KRS 224.01-
010(31)(a)(4).

(34) "Net working capital" means current assets minus
current liabilities.

(35) "Net worth means total assets minus total liabilities and
is equivalent to owner's equity.

(36) "Non-sudden accidental occurrence" means an occur-
cence that takes place over time and involves continuous or re-
peated exposure

(37) "Operator" means any person responsible for overall
operation of an on-site or off-site waste facility, including any pri-

tate contractor conducting operational activities at a federal facility.

(38) "Owner" means any person who owns an on-site or
off-site waste facility or any part of a facility.

(39) "Parent corporation" means a corporation that

directly owns at least fifty (50) percent of the voting stock of the cor-
poration, which is the facility owner or operator; the latter corporation
is considered a "subsidiary" of the parent corporation.

(40) "Permit" means the authorization or other control
document that:
(a) Is issued by the cabinet to implement the requirements of
the waste management administrative regulations, 401 KAR
(63)(65) Water* or "Waters of the Commonwealth" is defined by KRS 224.01-010(33).

Section 2. Substitution of Federal References. (1) The following federal parts and subparts, which are cited by federal regulations referenced in 401 KAR Chapter 35, shall be substituted with the state administrative regulations listed below.

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(2) The requirements of the following federal regulations, which are referenced in 401 KAR Chapter 35, shall include the modifications, exceptions, and additions that are specific to the Commonwealth of Kentucky set forth in the following state administrative regulations referenced in the table below.

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<tr>
<th>Federal Regulation</th>
<th>State Regulation</th>
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<td>40 C.F.R. 299.22</td>
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<td>40 C.F.R. 206.75</td>
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(3) The following federal regulations, which are cited by the state regulations referenced in 401 KAR Chapter 35, shall be replaced with the corresponding state administrative regulations identified in the table below.

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<th>Federal Regulation</th>
<th>State Regulation</th>
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<tr>
<td>40 C.F.R. Part 60 Appendix A</td>
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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 9, 2008)

401 KAR 35:080. General financial requirements (IS).
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Environmental and Public Protection Cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and financial responsibility of hazardous waste disposal facilities. EO 2008-507 and 2008-501, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the general financial requirements for owners and operators of hazardous waste sites and facilities that qualify for interim status. [To implement provisions of KRS 224.46-520 and to establish—general financial requirements for sites or facilities qualifying for interim status.]

Section 1. Financial Requirement Definitions. The definitions previously found in this section have been relocated to the definition administrative regulation for this chapter, which is 401 KAR 35:005.

Section 2. Applicability. (1) The requirements of 401 KAR 35:090, 401 KAR 35:120, and 401 KAR 35:130 apply to owners or operators of all hazardous waste sites or facilities, except as provided otherwise in this section or in 401 KAR 35:010, Section 1 [Section 1 of 401 KAR 35:010].
(2) The requirements of 401 KAR 35:100 and 35:110 apply only to owners and operators of:
(a) Disposal facilities;
(b) Tank systems that are required under 401 KAR 35:190, Section 5 [Section 5 of 401 KAR 35:100] to meet the requirements for landfills; [and]
(c) Containment buildings that are required under 401 KAR 35:245, Section 6 [Section 6 of 401 KAR 35:100] to meet the requirements of landfill end;
[d) Drip pads that are required under 401 KAR 35:285, Section 6 [Section 6 of 401 KAR 35:285].
(3) States and the federal government are exempt from the requirements of Section 1 of this administrative regulation.
(4) The cabinet may replace all or part of the requirements of this administrative regulation applying to a regulated unit with alternative requirements for financial assurance established[not established] in the permit or in an endorsement document [or not established] the cabinet.
(a) Prescribes alternative requirements for the regulated unit under 401 KAR 35:090, Section 1, or 401 KAR 35:070, Section 1; (and)
(b) Determines that it is not necessary to apply the requirements of this administrative regulation because the alternative financial assurance requirements shall[will] protect human health and the environment and (c) Provides for public notice and public comment in accordance with 401 KAR 38:050.

Section 3. General Financial Requirements. (1) This adminis-
Section 4. Standards Applicable to Users of Materials Used in a Manner that Constitutes Disposal. (1) Except as provided in subsections (2) to (4) of this section, requirements for standards applicable to users of materials used in a manner that constitutes disposal [the-subject-matter] shall be governed by 40 C.F.R. 224.62, effective July 1, 2005.

(2) Waste or used oil shall not be used as a dust suppressant in Kentucky.

(3) Any] Material contaminated with dioxens or hazardous waste shall not be used for dust suppressin in Kentucky.

(4) The citation to Section 3010 of RCRA in the federal regulation referenced in subsection (1) of this section shall be replaced with 401 KAR 34.020(401-KAR-35.020), Section 2, and 401 KAR 35.020, Section 2.

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 14, 2006
FILED WITH LRC: April 14, 2008 at 1 p.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Relly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 8, 2008)

401 KAR 37:005. Definitions for 401 KAR Chapter 37.

RELATES TO: KRS Subchapters 224.01, 224.10, 224.40 to 224.46, 224.49, 40 C.F.R. 266 Subpart C, EO 2009-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires that persons engaging in recycling of hazardous waste obtain a permit. KRS 224.46-520 requires the Environmental and Public Protection Cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste recycling facilities. EO 2009-507 and 2008-531, effective June 16, 2008, establish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes minimum standards for recyclable materials used in a manner constituting disposal.

Section 1. Definitions. Except as provided in subsection (2) of this section, requirements for applicability of the-subject-matter shall be governed by 40 C.F.R. 224.62, effective July 1, 2005.

(2) The citation to Section 3004(d) of RCRA in the federal regulation referenced in subsection (1) of this section shall be replaced with KRS 224.46-520.

Section 2. Standards Applicable to Generators and Transporters of Materials Used in a Manner that Constitutes Disposal. (1) Except as provided in subsection (2) of this section, requirements for standards applicable to generators and transporters of materials used in a manner that constitutes disposal [the-subject-matter] shall be governed by 40 C.F.R. 226.21, effective July 1, 2005.

(2) The citation to Section 3010 of RCRA in the federal regulation referenced in subsection (1) of this section shall be replaced with KRS 224.46-510(3).

Section 3. Standards Applicable to Storers of Materials that are to be Used in a Manner that Constitutes Disposal who are Not the Ultimate Users. (1) Except as provided in subsection (2) of this section, requirements for standards applicable to storers of materials that are to be used in a manner that constitutes disposal [the-subject-matter] shall be governed by 40 C.F.R. 226.22, effective July 1, 2005.

(2) The citation to Section 3010 of RCRA in the federal regulation referenced in subsection (1) of this section shall be replaced with 401 KAR 34.020, Section 2, and 401 KAR 35.020, Section 2.
(31),(33) "United States" means the Commonwealth of Kentucky.
(32),(34) "Used oil" is defined by KRS 224.50-545(2)(a).
(33),(35) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:
(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in 401 KAR 37:040, Section 1 in Table Treatment Standards for Hazardous Waste;
(b) K101, K102, K103, K104 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and
(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.
(34),(36) "Waters of the Commonwealth" is defined by KRS 224.01-010(33).

Section 2. Substitution of Federal References. (1) The following federal parts and subparts, which are cited by federal regulations referenced in 401 KAR Chapter 37, shall be substituted with the state administrative regulations listed below.

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<thead>
<tr>
<th>Federal Regulation</th>
<th>State Regulation</th>
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(3) The following federal regulations, which are cited by the federal regulations referenced in 401 KAR Chapter 37, shall be replaced with the state administrative regulations as identified in the table below.

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Section 8. Alternative Treatment Standards Based on HTMR. Requirements for alternative treatment standards based on HTMR[The subject matter] shall be governed by 40 C.F.R. 268.46, effective July 1, 2005.


Section 10. Alternative LDR Treatment Standards for Contaminated Soils. (1) Except as provided in subsection (2) of this section, requirements for alternative LDR treatment standards for contaminated soils[the subject matter] shall be governed by 40 C.F.R. 268.49, effective July 1, 2005.

(2) The citation to Subtitle C of RCRA in the federal regulation referenced in subsection (1) of this section shall be replaced with KRS 224.46.

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 14, 2008
FILED WITH LRC: April 14, 2008 at 1 p.m.
CONTACT PERSON. Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 8, 2008)

401 KAR 37:040. Treatment standards.

RELATES TO: KRS Subchapters 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 40 C.F.R. 268 Subpart D, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-505 and 224.46-520 authorize the Environmental and Public Protection Cabinet to control land disposal of hazardous waste to be protective of human health and the environment. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes hazardous waste treatment standards.

Section 1. Definitions. (1) “Administrator” means:
(a) As referenced in 40 C.F.R. 268.42(a) and 268.44(a) through (g), “administrator” as defined by 40 C.F.R. 260.10; or
(b) “Administrator” as defined by 401 KAR 37:005.
(2) “Federal Register” means, as referenced in 40 C.F.R. 268.42(b) and 268.44(a) through (g), the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(3) “LDR” means land disposal restrictions.


Section 3. Treatment Standards Expressed as Concentrations in Waste Extract. Requirements for treatment standards expressed as concentrations in waste extract[The subject matter] shall be governed by 40 C.F.R. 268.41, effective July 1, 2005.


Section 5. Treatment Standards Expressed as Waste Concentrations. Requirements for treatment standards expressed as waste concentrations[The subject matter] shall be governed by 40 C.F.R. 268.43, effective July 1, 2005.


401 KAR 38:005. Definitions for 401 KAR Chapter 38.


STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28)(224.40-100(40)) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation defines essential terms that are used in 401 KAR Chapter 38. Some federal terms have been modified to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 38.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 260.10, effective September 9, 2005, shall apply.

(1) “100-year flood” means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.
(2) “100-year floodplain” means any land area that is subject to a one (1) percent or greater chance of flooding in any given year from any source.
(3) “Administrator,” “agency,” “regional administrator,” “assistant administrator,” “assistant administrator for solid waste and emergency response,” “director,” “regional director,” or “state director” means the Energy and Environment Cabinet, pursuant to EO 2008-507 and 2008-531, effective June 16, 2008 (cabinet as defined in KRS 224.01-010(9)).
(4) “Burn” means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.
(5) “Cabinet” is defined by KRS 224.01-010(9), and EO 2008-507 and 2008-531 reorganized the Environmental and Public Protection Cabinet as the Energy and Environment Cabinet, effective June 16, 2008.
(6) "Closure" is defined by KRS 224.01-010(4).

(7) "Corrective Action Management Unit" or "CAMU" means an area within a facility that:
   (a) is designated by the cabinet under 401 KAR 34:257, for the purpose of implementing corrective action requirements under 401 KAR 34:050, 34:257, and KFS 330-4-020 and 330-4-030; and
   (b) Shall only be used for the management of remediation wastes pursuant to implementing the corrective action requirements at the facility.

(8) "CWA" means the Clean Water Act [formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972] Pub L. 92-500, as amended by Pub L. 92-247 et seq. and KFS 330-5-017, 330-5-018 et seq.

(9) "Disposal" is defined by KRS 224.01-010(10).

(10) "Draft permit" means a document prepared under 401 KAR 38:050, Section 3, indicating the cabinet's tentative decision to issue or deny, modify, revoke and rescind, terminate, or rescind a permit. A notice of intent to terminate a permit or, and a notice of intent to deny a permit, as discussed in 401 KAR 38:050. Section 2 is issued a "draft permit." A proposed permit is not a "draft permit." A denial of a request for modification, revocation and rescission, or termination, as discussed in 401 KAR 38:050, is not a "draft permit."

(11) "Emergency permit" means a hazardous waste management permit issued in accordance with 401 KAR 38:050, Section 2.

(12)(1) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency, as defined in the federal hazardous waste number, "EPA identification number," "EPA Region," "EPA Acknowledgment of Consent," "EPA Test Methods," "SNAP" and "EPA publications."

(13) "Facility mailing list" means the mailing list for a facility maintained by the cabinet in accordance with 401 KAR 38:050, Section 7(b)(a).

(14) "Facility or activity" means any HW facility or another facility or facility aspect or activity (including land or appurtenances thereto) that is subject to regulation under 401 KAR Chapters 24, 35, or 38.

(15) "Facility mailing list" means the mailing list for a facility maintained by the cabinet in accordance with 401 KAR 38:050, Section 7(b)(a).

(16) "Federal Register" means the "Kentucky Administrative Register" as defined in KRS 13A.050.

(17) "Functionally equivalent component" means a component that performs the same function or measurement and which may or exceeds the performance specifications of another component.

(18) "Generator" is defined by KRS 224.01-010(13).

(19) "Hazardous waste" is defined by KRS 224.01-010(31)(c).

(20) "Hazardous Waste Management Facility" or "HW Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous wastes. A facility may consist of several treatment, storage, or disposal operational units.

(21) "Interim status" means the designation of a hazardous waste site or facility that was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 C.F.R. Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(22) "KPDES" means the Kentucky Pollution Discharge Elimination System.

(23) "Major facility" means any facility or activity classified as a major facility under KRS 224.01-010(3).

(24) "Manifest" is defined by KRS 224.01-010(37).

(25) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(26) "Offsite" means the disposal of hazardous waste that is not on-site, as defined in 40 C.F.R. Part 261.14(a).

(27) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:050.

(28) "Part B of the application" or "Part B" means the standard form for applying for a hazardous waste site or facility permit as required in 401 KAR 38:050 to 38:300.

(29) "Permit" means an authorization, license, or equivalent control documentation issued by the cabinet to implement the requirements of 401 KAR Chapter 38. Permit includes permit by rule, emergency permit, and standardized permit.

(30) Permit does not include interim status (401 KAR 38:350) or permit that any facility or program has not been subject to final agency action, such as a draft permit or a proposed permit.

(31) "Person" means any person holding a valid permit issued by the cabinet to manage, store, treat, or dispose of waste.

(32) "Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HW facility to accept hazardous waste.

(33) "Potentially affected party" means any person holding a valid permit issued by the cabinet to manage, store, treat, or dispose of waste.

(34) "Publicly owned treatment works" or "POTW" is defined by KRS 224.01-010(1).

(35) "Remedial action plan" is defined by 40 C.F.R. 270.2 (means a special form of hazardous waste management plan that a facility owner, operator, or operator may obtain instead of a permit issued under 401 KAR 38:010 through 38:310, that specifies the treatment, storage, or disposal of hazardous remediation waste as defined in 401 KAR 38:006, at a remediation waste management site.)

(36) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for the experimental activity have not been promulgated under 401 KAR Chapters 24, 35, or 38.

(37) "Schedule of compliance" is defined by 40 C.F.R. 270.2 (means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements for example, actions, operations, or milestones (event) leading to compliance with the Act and regulations.)


(39) "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.

(40) "Solid waste" is defined by KRS 224.01-010(31)(a).

(41) "State" means the Energy and Environment Cabinet, pursuant to EQ 2008-507 and 2008-351, effective June 1, 2008, as defined in KRS 224.01-010(9).

(42) "State/EPA Agreement" means an agreement between the regional administrator and the cabinet that regulates EPA and Cabinet activities, responsibilities, and programs.

(43) "Storage" is defined by KRS 224.01-010(28).

(44) "Transitional facility" is defined by KRS 224.01-010(48).

(45) "Transportation" is defined by KRS 224.01-010(29).

(46) "Treatment" is defined by KRS 224.01-010(30).

(47) "USC" means an underground injection control well as provided in 40 C.F.R. Part 144.

(48) "United States" means the Commonwealth of Kentucky.
SECTION 2, SUBSTITUTION OF FEDERAL REFERENCES

The following tables list the federal regulations referenced in 401 KAR Chapter 38, which are cited by state regulations. The federal regulations are listed below according to their state regulation equivalents.

<table>
<thead>
<tr>
<th>Federal Regulation</th>
<th>State Regulation</th>
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<tbody>
<tr>
<td>40 C.F.R. Part 260</td>
<td>401 KAR Chapter 30</td>
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<td>40 C.F.R. 260 Subpart A</td>
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<td>40 C.F.R. 264 Subpart Y</td>
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-275-
(2) The requirements of the following federal regulations, which are referenced in 401 KAR Chapter 38, shall include the modifications, exceptions, and additions that are specific to the Commonwealth of Kentucky set forth in the following state administrative regulations referenced in the table below.

<table>
<thead>
<tr>
<th>Federal Regulation</th>
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<td>40 C.F.R. 261.4</td>
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(3) The following federal regulations, which are cited by the federal regulations referenced in 401 KAR Chapter 38, shall be replaced with the state administrative regulations as identified in the table below.

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<tr>
<td>pendix A</td>
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<tr>
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<td>40 C.F.R. 265.148</td>
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HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director,
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Tony.Hatton@ky.gov

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 8, 2008)

401 KAR 38:040. Changes to permits; expiration of permits.

RELATES TO: KRS Subchapters 224.01, 224.10, 224.40, 224.43, 224.46, 224.59, 40 C.F.R. 270 Subparts D, E, EO 2008-
507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

Necessity, Function, and Conformity: KRS 224.46-
501 and 224.46-530 require the Environmental and Public Protection
Cabinet to promulgate administrative regulations for waste
abolish the Environmental and Public Protection Cabinet and
establish the new Energy and Environment Cabinet. This
administrative regulation establishes the requirements pertaining
to changes and expiration of hazardous waste permits. This adminis-
trative regulation is equivalent to federal standards established in
40 C.F.R. 270 Subparts D and E, except Section 1 of this adminis-
trative regulation requires the inclusion of background information
and past compliance record in revised permit applications, Section 5
of this administrative regulation requires the review of nerve
gent permits five (5) years postissuance, and Section 6 of this
administrative regulation requires a permit fee.

Section 1. Transfer of Permits. (1) Except as provided in sub-
sections (2) and (3) of this section, requirements for transfer of
permits[the subject matter] shall be governed by 40 C.F.R.
270.40, effective July 1, 2005.

(2) In addition to the requirements of 40 C.F.R. 270.40(b), a
revised permit application shall include the background information
and past compliance record required by KRS 224.46-330 and 401
KAR 38:090.

(3) The requirements contained within 40 C.F.R. 270.40(a)
shall be replaced with the following: A permit may be transferred by
the permittee to a new owner or operator only if the permit has
been modified or revoked and resubmitted. A permit may be
incorporated into other requirements necessary under KRS
Chapter 224 and 401 KAR Chapters 30 through 38.

Section 2. Modification or Revocation and Reissuance of Per-
mits. (1) Requirements for modification or revocation and reis-
suance of permits[the subject matter] shall be governed by 40 C.F.R.
270.41, effective July 1, 2005.

(2) Class I modifications shall be submitted on the Form DEP
7092 entitled "Notification of Class I Modifications to Hazardous
Waste Permits Not Requiring Prior Approval of the Cabinet."
Section 3. Permit Modification at the Request of the Permittee. (1) Requirements for permit modification at the request of the permittee shall be governed by 40 C.F.R. 270.42 and Appendix 1 to 40 C.F.R. 270.42, effective July 1, 2005. (2) The citation to 40 C.F.R. 124.19 in the federal regulation referenced in subsection (1) of this section shall be replaced with KRS 224.46-500. (3) The citation to RCRA Subtitle C in the federal regulation referenced in subsection (1) of this section shall be replaced with KRS Subchapter 224.46.

Section 4. Termination of Permits. (1) Requirements for termination of permits shall be governed by 40 C.F.R. 270.43, effective July 1, 2005. (2) The cabinet may terminate a permit during its term or deny a permit renewal application for a violation of any requirement of KRS Chapter 224 or administrative regulations promulgated pursuant thereto (including 401 KAR 40.040). (3) The citation to 40 C.F.R. Part 52 in the federal regulation referenced in subsection (1) of this section shall be replaced with this administrative regulation and 401 KAR 401-38.040 and Chapter 40.

Section 5. Duration of Permits. (1) Except as provided in subsection (2) of this section, requirements for duration of permits shall be governed by 40 C.F.R. 270.50, effective July 1, 2005. (2) A permit for the nerve agents specified in KRS 224.50-130 shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified if necessary, as provided in Section 2 of this administrative regulation.

Section 6. Continuation of Expired Permits. (1) The conditions of an expired permit shall continue in force until the effective date of a new permit if: (a) The permittee; 1. Submitted a timely application as established in 401 KAR 38 090 and 38:100; 2. Complied with the applicable requirements in 401 KAR 38:150 to 38:210; 3. Submitted an application that is complete for a new permit as required in 401 KAR 38 070, Section 1; and 4. Paid the applicable fees due as established in KRS 224.46-016, 224.46-018, and 401 KAR Chapter 39; and (b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, if issuance is impracticable due to time or resources constraints). (2) Effect. Permits continued under this section shall remain fully effective and enforceable. (3) Enforcement. In accordance with 40 C.F.R. 270.51(c), if the permittee is not in compliance with the conditions of the expiring or expired permit, the cabinet may do any or all of the following: (a) Initiate enforcement action based upon the permit that has been continued; (b) Issue a notice of intent to deny the new permit under 401 KAR 38:050, Section 3. If the permit is denied, the owner or operator shall: 1. Cease the activities authorized by the continued permit; or 2. Be subject to enforcement action for operating without a permit; (c) Issue a new permit under 401 KAR 38:050 with appropriate conditions; or (d) Take other actions authorized by 401 KAR Chapters 30 to 40.

Section 7. Incorporation by Reference. (1) "Notification of Class I Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet", Form DEP 7092, July 2008[2006], is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday 8:00 a.m. to 4:30 p.m. (3) This document may also be obtained from the Division of Waste Management's Web site located at www.waste.ky.gov.

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 14, 2008
FILED WITH LRC: April 14, 2008 at 1 p.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 9, 2009)

401 KAR 43:005. Definitions for 401 KAR Chapter 43.


STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(2008-224.46-40-400) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation defines essential terms that are used in 401 KAR Chapter 43. Some federal terms have been modified to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 43.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 260.10, effective September 9, 2009, shall apply.

(1) "Administrator", "agency", "assistant administrator", "regional administrator", "director", or "regional director" means the Energy and Environment Cabinet, pursuant to EO 2008-507 and 2008-531, effective June 16, 2008 (cabinet as defined in KRS 224.01-010(9)). (2) "Cabinet" is defined by KRS 224.01-010(9), and EO 2008-507 and 2008-531 reorganized the Environmental and Public Protection Cabinet as the Energy and Environment Cabinet, effective June 16, 2008.

(3) "Conditionally exempt small quantity generator" means:
(a) A generator who generates not (the) more than 100 kilograms of hazardous waste in a calendar month; or
(b) A generator who generates acutely hazardous waste listed in 401 KAR 31.040, Sections 2, 3, or 4, in a calendar month in quantities not [the] greater than one (1) kilogram.

(4) "Disposal" is defined by KRS 224.01-010(10).

(5) "Environmental Protection Agency" or "EPA" means the Kentucky Department for Environmental Protection except if used in the phrases "EPA hazardous waste number", "EPA Identification number", "EPA region", "EPA Acknowledgment of Consent", "EPA Test Methods", or (and) "EPA publications".

(6) "EPA Regional Office" or "regional EPA office" means the Energy and Environment Cabinet, pursuant to EO 2008-507 and 2008-531, effective June 16, 2008 (cabinet, as defined in KRS 224.01-010(9)), in the federal regulations cited in the following administrative regulations:
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<th>Federal Regulation</th>
<th>State Regulation</th>
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<tr>
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Federal Regulation | State Regulation
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(2) The requirements of the following federal regulations, which are referenced in 401 KAR Chapter 43, shall include the modifications, exceptions, and additions that are specific to the Commonwealth of Kentucky set forth in the following state administrative regulations referenced in the table below.

Federal Regulation | State Regulation
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(3) The following federal regulations, which are cited by the federal regulations referenced in 401 KAR Chapter 43, shall be replaced with the corresponding state administrative regulation identified in the table below.

Federal Regulation | State Regulation
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- 279 -
spicuous place in the booking area and living areas of the jail, and a copy shall be made available to the prisoner as soon after admission as possible. Upon admission and receipt, 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 processes.

(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 that 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 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 allowed visit.

(7) Each prisoner 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) 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;

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (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 area.

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.
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Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," May 15, 2008, art. 16, November 6, 2008, incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-06-01 Public Information and News Media Access (Amended 5/15/08)
BCFC 02-01-01 Inmate Canteen (Amended 5/15/08)
BCFC 02-06-01 Prisoners' Fund (Amended 5/15/08)
BCFC 05-02-01 Consultants, Research, and Student Interns (Amended 5/15/08)
BCFC 06-01-01 Offender Records (Amended 10/15/08)
BCFC 06-02-01 Storage of Expunged Records (Amended 10/15/08)
BCFC 07-02-01 Preventative Maintenance Plan (Added 10/15/08)
BCFC 07-04-01 Smoking Control (Amended 5/15/08)[4/15/08]
BCFC 07-05-01 Permit Required Confined Space (Amended 5/15/08)
BCFC 08-02-01 Fire Prevention (Amended 7/8/08)[8/15/08]
BCFC 08-03-01 Fire Procedures (Amended 5/15/08)
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 5/15/08)
BCFC 09-01-01 Search Policy and Disposition of Contraband (Amended 5/15/08)
BCFC 09-01-01 Drug Abuse Testing (Amended 5/15/08)
BCFC 09-01-01 Breathalyzer Testing (Amended 10/15/08)
BCFC 09-01-01 Operation of Licensed Vehicles by Inmates (Amended 5/15/08)
BCFC 09-14-01 Bell County Forestry Camp Restricted Areas (Amended 5/15/08)
BCFC 09-27-01 Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)
BCFC 10-01-01 Temporary Segregation Holding Area (Amended 5/15/08)
BCFC 11-01-01 Food Services: General Guidelines (Amended 10/15/08)
BCFC 11-02-01 Food Service Security (Amended 10/15/08)
BCFC 11-03-01 Room Guidelines (Amended 10/15/08)
BCFC 11-04-01 Food Service: Meals (Amended 10/15/08)
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 10/15/08)
BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 10/15/08)
BCFC 11-05-01 Health Requirements of Food Handlers (Amended 10/15/08)
BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 10/15/08)
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 10/15/08)
BCFC 12-01-01 Sanitation: Living Condition Standards and Clothing Issues (Amended 5/15/08)
BCFC 12-01-02 Food Areas and Bed Assignments (Amended 5/15/08)
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)
BCFC 12-03-02 Barber Shop (Barber shop) Services and Barber Control (Amended 5/15/08)
BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/08)
BCFC 13-01-01 Medical Services (Amended 5/15/08)
BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 5/15/08)
BCFC 13-03-01 Dental Services (Amended 5/15/08)

BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/15/08)
BCFC 13-05-01 Emergency Medical Care (Amended 5/15/08)
BCFC 13-06-01 Consultations (Amended 5/15/08)
BCFC 13-07-01 Health Records (Amended 5/15/08)
BCFC 13-08-01 Vision and Optometry Services (Amended 7/8/08)[6/15/08]
BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)
BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)
BCFC 13-11-01 Informed Consent (Amended 5/15/08)
BCFC 13-12-01 Mental Health Care (Amended 5/15/08)
BCFC 13-13-01 Special Health Care Programs (Amended 5/15/08)
BCFC 13-14-01 Use of Pharmaceutical Products (Amended 7/8/08)[6/15/08]
BCFC 13-15-01 Perinatal Administration of Medications and Use of Psychotropic Drugs (Amended 5/15/08)
BCFC 13-16-01 Electro Services (Amended 5/15/08)
BCFC 13-18-01 Scurvy and Infectious Diseases (Amended 5/15/08)
BCFC 13-19-01 Continuity of Health Care (Amended 5/15/08)
BCFC 13-20-01 Inmates Assigned to Health Services (Amended 5/15/08)
BCFC 13-21-01 Suicide Prevention and Intervention Program (Amended 5/15/08)
BCFC 13-24-01 Inmate Self-Administration of Medication (Amended 5/15/08)
BCFC 13-25-01 Syringes, Needles, and Sharps Control (Amended 5/15/08)
BCFC 13-26-01 Sexual Assault (Amended 5/15/08)
BCFC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/08)
BCFC 15-01-01 BCFC Adjustment Program (Amended 5/15/08)
BCFC 16-01-01 Inmate Visiting (Amended 5/15/08)
BCFC 16-02-01 Telephone Communications (Amended 5/15/08)
BCFC 16-03-01 Inmate Mail Regulations (Amended 5/15/08)
BCFC 16-03-02 Inmate Packages (Amended 5/15/08)
BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)
BCFC 17-04-01 BCFC Inmate Property Control (Amended 7/8/08)[6/15/08]
BCFC 17-05-01 Inmate Canteen (Amended 5/15/08)
BCFC 18-01-01 Institutional Classification Committee (Amended 5/15/08)
BCFC 18-02-01 Identification of Special Needs Inmates (Amended 5/15/08)
BCFC 19-01-01 Work Assignment (Amended 5/15/08)
BCFC 19-02-01 Governmental Services Program (Amended 5/15/08)
BCFC 20-01-01 Academic School (Amended 5/15/08)
BCFC 21-01-01 Library Services (Amended 5/15/08)
BCFC 22-01-01 Recreation and Inmate Activities (Amended 5/15/08)

BCFC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/08)
BCFC 23-01-01 Religious Services (Amended 5/15/08)
BCFC 24-01-01 Social Services and Counseling Program (Amended 5/15/08)
BCFC 24-01-02 Casework Services (Amended 5/15/08)
BCFC 25-01-01 BCFC Pre-release Program (Amended 5/15/08)
BCFC 25-02-01 Community Center Program (Amended 7/8/08)[6/15/08]
BCFC 25-02-02 Inmate Furlough (Amended 5/15/08)
BCFC 25-04-01 Inmate Discharge Procedure (Amended 5/15/08)
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/08)
BCFC 31-01-01 Establishment of the BCFC Institutional Operations Manual (Added 10/15/08)

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3275, fax (502) 564-6686; Office of the General Counsel, Department of Corrections, 2459 Lawtonburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: May 13, 2008
FILED WITH LRC: May 14, 2008 at 3 p.m.

CONTACT PERSON: Karen Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3275, fax (502) 564-6686.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Fraud, Waste and Abuse, Identification and Prevention
(As Amended at ARRS, July 8, 2008)


RELATES TO: KRS 218A.010(1), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 218A.202(2), 218A.240, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to establish criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.


(2) "Cabinet personnel" means an individual who:

(a) Is directly employed by the Cabinet for Health and Family Services; or

(b) is employed by an agent or contractor of the cabinet;

(c) has undergone KASPER training; and

(d) has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9)(216-04(9)).

(4) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(5) "Patient identifier" means a patient’s:

(a) Full name,

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(6) "KASPER Reporting Form" is a form that:

(a) is in the format of the KASPER Reporting Form incorporated by reference in Section 7(6) of this administrative regulation; and
Section 2. Data Reporting (1) A dispenser shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet’s agent:

(a) Patient identifier;
(b) National drug code of the drug dispensed;
(c) Metric quantity of drug dispensed;
(d) Date of dispensing;
(e) Estimated day’s supply dispensed;
(f) Drug Enforcement Administration registration number of the prescriber;
(g) Serial number assigned by the dispenser; and
(h) The Drug Enforcement Administration registration number of the dispenser.

(3) The data identified in subsection (2) of this section shall be transmitted within eight (8) days of the date of dispensing unless the cabinet grants an extension.

(4)(a) An extension may be granted if:
1. The dispenser suffers a mechanical or electronic failure; or
2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (9) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet’s agent;
(b) Double sided, high density micro floppy disk;
(c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape;
(d) Secure File Transfer Protocol;
(e) https protocol;
(f) CD/DVD; or
(g) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the format established by the “ASAP Telecommunications Format for Controlled Substances”, American Society for Automation In Pharmacy, May 1995, or a comparable format approved by the branch.

Section 3. Compliance A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient’s agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER report shall be made electronically at “http://chfs.ky.gov/oig/kasper”.

(3) A request for a KASPER report shall be made by written application on one (1) of the following forms:

(a) For law enforcement, on the “Request for Law Enforcement KASPER Report”, Form DCB-15L;
(b) For judiciary, on the “Request for KASPER Report (Court)”, Form DCB-15J; or
(c) For pharmacy, on the “Request for KASPER Report”, Form DCB-15P.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient’s Social Security number for purposes of the dispenser’s mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient’s driver’s license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver’s license number, the number 000-00-0000 shall be used.

(4) If a patient is a child who does not have a Social Security number or a driver’s license number, the Social Security number, driver’s license number, or the number 000-00-0000*, as applicable, of the parent or guardian shall be used.

(5) If a patient is an animal, the owner’s Social Security number, driver’s license number, or the number *000-00-0000*, as applicable, shall be used.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) “ASAP Telecommunications Format for Controlled Substances”, American Society for Automation in Pharmacy, May 1995;

(b) “KASPER Reporting Form”, July 2008; Pharmacy Universal Claim Form;

(c) “Request for Law Enforcement KASPER Report”, Form DCB-15L, 5/06;

(d) “Request for KASPER Report (Court)”, Form DCB-15J, 5/06; and

(e) “Request for KASPER Report”, Form DCB-15P, 5/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and may be viewed online at “http://chfs.ky.gov/oig/KASPER.htm”.

SADIQ REYNOLDS, ESQ., Inspector General
JANIE MILLER, Secretary
APPROVED BY AGENCY: May 12, 2008
FILED WITH LRO: May 12, 2008 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(As Amended at ARRS, July 8, 2008)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210 720, 210.730
STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2),
210.750
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) [210.740] requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet, at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.700 to 210.750, the Patent Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2)(d)(3) of this section that is provided.

(a) The per diem rate through the effective date of this administrative regulation [June 30, 2000] for room and board for each facility shall be as follows:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central State Hospital</td>
<td>$535</td>
</tr>
<tr>
<td>Central State - ICF/MR</td>
<td>$730</td>
</tr>
<tr>
<td>Western State Hospital</td>
<td>$455</td>
</tr>
<tr>
<td>Western State Nursing Facility</td>
<td>$325</td>
</tr>
<tr>
<td>Outwood ICF/MR</td>
<td>$390</td>
</tr>
<tr>
<td>Oakwood Community Center</td>
<td>$655</td>
</tr>
<tr>
<td>Hazelwood Center</td>
<td>$645</td>
</tr>
<tr>
<td>Glasgow State Nursing Facility</td>
<td>$290</td>
</tr>
<tr>
<td>Del Mana</td>
<td>$645</td>
</tr>
<tr>
<td>Meadows</td>
<td>$635</td>
</tr>
<tr>
<td>Windsong</td>
<td>$570</td>
</tr>
<tr>
<td>Eastern State Hospital</td>
<td>$440</td>
</tr>
<tr>
<td>Volta House</td>
<td>$140</td>
</tr>
</tbody>
</table>

(b) [The per diem rate through the effective date of this administrative regulation [July 1, 2000] for room and board for each facility shall be as follows:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central State Hospital</td>
<td>$595</td>
</tr>
<tr>
<td>Central State - ICF/MR</td>
<td>$1,015</td>
</tr>
<tr>
<td>Western State Hospital</td>
<td>$480</td>
</tr>
<tr>
<td>Western State Nursing Facility</td>
<td>$265</td>
</tr>
<tr>
<td>Outwood ICF/MR</td>
<td>$310</td>
</tr>
<tr>
<td>Oakwood Community Center</td>
<td>$860</td>
</tr>
<tr>
<td>Hazelwood Center</td>
<td>$700</td>
</tr>
<tr>
<td>Glasgow State Nursing Facility</td>
<td>$355</td>
</tr>
<tr>
<td>Del Mana</td>
<td>$645</td>
</tr>
<tr>
<td>Meadows</td>
<td>$635</td>
</tr>
<tr>
<td>Windsong</td>
<td>$570</td>
</tr>
<tr>
<td>Eastern State Hospital</td>
<td>$410</td>
</tr>
<tr>
<td>Volta House</td>
<td>$140</td>
</tr>
</tbody>
</table>

(2) (d) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

(a) Physicians services;
(b) EEG;
(c) EKG;
(d) Occupational therapy;
(e) Physical therapy;
(f) X-ray;
(g) Laboratory;
(h) Speech therapy;
(i) Hearing therapy;
(j) Psychology;
(k) Pharmacy;
(l) Respiratory therapy;
(m) Anesthesia;
(n) Electroshock therapy;
(o) Physician assistant; or
(p) Advanced registered nurse practitioner.

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be established using the last available cost report increased for inflation. Current rates shall be posted at each facility.

JOHN M. BURT, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: March 14, 2008
FILED WITH LRC: March 14, 2008 at 11 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-6, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(As Amended at ARRS, July 8, 2008)

910 KAR 1:160. Program and certification requirements for the Adult Day and Alzheimer's Respite Program.

RELATES TO: KRS Chapter 133, 194A.060(2), 194A.700(1), (2), 205.010(6), (15), 205.201, 205.203, 205.204(1), 205.455(4), 205.460, 205.485, 205.950, 205.955, 209.030(2), (3), 216.787, 42 U.S.C. 3001, 3025
STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2), 205.950, 42 U.S.C. 3025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.950 requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish health, safety, and treatment requirements for certified adult day-care centers, and to establish criteria for their certification. 42 U.S.C. 3025(3004) requires grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) requires the cabinet to adopt administrative regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. 3001 in Kentucky. This administrative regulation establishes the adult day and Alzheimer's respite program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).
(2) "Adult day-care center" is defined by KRS 205.010(15).
(3) "Adult day center respite" means respite provided in a group setting outside the home.
(4) "Adult day services" means a supportive and therapeutic social program of supervision and care:
(a) Provided to an eligible adult as defined in Section 2 of this administrative regulation;
(b) During a part of the day, but for less than twenty-four (24) hours [as established in KRS 205.010(15)]; and
(c) For:
1. Assistance with self-administration of medication;
2. Personal care services;
3. Self-care training;
4. Social activities; and
5. Recreational opportunities.
(5) "Adult day health services" means a licensed program to provide continuous supervision of the client's medical and health needs.
(6) "Alzheimer's disease or related dementia disease"
means neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(7) "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a client with Alzheimer's disease or related dementing disease in a client's home or in a center to enable the caregiver temporary relief from care giving duties.

(8) "Area plan" means the plan submitted by a district for the approval of the department that releases funds under contract for the delivery of services within the planning and service area.

(9) "Assessment" means the collection of information and evaluation about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care may be developed.

(10) "Assistance with self-administration of medication" is defined by KRS 194A.700(2).

(11) "Case management" means:
(a) A process for ensuring that participants receive appropriate, comprehensive, and timely services to meet their needs as identified in the assessment process;
(b) Planning;
(c) Referring the participant to appropriate agencies and individuals in the informal care giving systems;
(d) Monitoring; and
(e) Advocacy through case work in order to achieve the best possible resolution of individual needs.

(12) "District" is defined by KRS 205.455(4).

(13) "Identifiable space" means space set apart by visible barriers from other activities within the setting.

(14) "In-home respite" means respite provided in the client's home.

(15) "Licensed adult day health center" means a program licensed by the Kentucky Cabinet for Health and Family Services in accordance with 902 KAR 20-056.

(16) "Needy aged" is defined by KRS 205.010(6).

(17) "Nutrient dense snack" means a snack that contains a high proportion of nutrients in comparison to the number of calories.

(18) "Personal care services" means activities to help participants maintain and attain good personal hygiene, including assistance with eating, dressing, and daily living as defined by KRS 194A.700(4).

(19) "Plan of care" means a written guide of action:
(a) Developed and agreed upon by the:
1. Client;
2. Primary caregiver, if applicable; and
3. Program case manager;
(b) Based on the participant's needs, goals, and resources; and
(c) Including appropriate services to meet identified needs and achieve objectives.

(20) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes that may have occurred since the last assessment.

(21) "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite program, an individual shall:

(1) Be able to respond and share in program activities without creating health and safety risks to self or others; and
(2)(a) Be:
1. Sixty (60) years of age or older;
2. Physically disabled or frail as a result of medical condition or age; and
3. In need of supervision or assistance during part of the day;
(b) Be:
1. Sixty (60) years of age or older;
2. Mentally confused; and
3. In need of supervision to prevent injury, assure proper nutrition, and assist with self-administration of medication;
(c) Be:
1. Sixty (60) years of age or older; and
2. One who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available; or
3. Be:
1. Any age; and
2. Have a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation.

Section 3. Assessment and Case Management. (1)(a) Each applicant for services shall be assessed for eligibility and need of services.

(b) For each eligible applicant, a plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his or her abilities.

(2)(a) The case manager shall refer the client[The client shall be referred by the case manager] for other needed services identified by the assessment.

(c) One (1) service provider shall provide case management. Case management shall be provided to a client receiving multiple services [but shall be provided by one (1) service provider only].

(3) The program director shall arrange for or conduct a formal reassessment at least every six (6) months.

Section 4. Fees and Contributions. (1) A case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment or case management services.

(b) The case manager shall:
1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and
2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible needy aged individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)(1) SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2)(a) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate shown in the chart in paragraph (c) of this subsection, based upon income and size of family using the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services.

(b) Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

(c) The fee amount shall be calculated using a percentage rate based on the household's percentage of poverty, as follows:

<table>
<thead>
<tr>
<th>Percentage of Poverty</th>
<th>1 Person</th>
<th>2 Person</th>
<th>3 Person or More</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-129%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>130%-149%</td>
<td>20%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>150%-169%</td>
<td>40%</td>
<td>20%</td>
<td>0%</td>
</tr>
<tr>
<td>170%-189%</td>
<td>60%</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>190%-209%</td>
<td>80%</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>210%-229%</td>
<td>100%</td>
<td>80%</td>
<td>60%</td>
</tr>
<tr>
<td>230%-249%</td>
<td>100%</td>
<td>100%</td>
<td>80%</td>
</tr>
<tr>
<td>250% and above</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

(3)(a) A contribution from an individual, family, or other entity shall be encouraged.

(b) Suggested contribution rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Adult day services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure imple-
mented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

(a) The adult day care program funding formula, as required by 42 U.S.C. 3025(e)(2)(A)(ii), shall consist of a $30,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (60+) population in the state.

(b) The department may increase base funding as the need is determined contingent upon available funding.

Section 5. Termination or Reduction of Services. (1)(a) Only a case manager or client may decide to terminate adult day and Alzheimer's respite services.

(b) Adult day and Alzheimer's respite services may be reduced if:

1. The client's condition or support system improves; or
2. A determination that the plan of care specified in Section 3(1)(b) of this administrative regulation cannot be followed.

(2) If adult day and Alzheimer's respite services are terminated or reduced, the case manager shall:

(a) Inform the client of the right to file a request for a hearing in accordance with Section 12 of this administrative regulation;

(b) Notify the client or caregiver of the action taken; and

(c) Assit the client and family in making a referral to another agency, if applicable.

Section 6. Service Provider Responsibilities. (1) The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the client and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe and consistent manner;

(c) Collect the fee for service as determined by the case manager based on the sliding fee scale in Section 4 of this administrative regulation;

(d) Use fees and donations to increase services;

(e) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(f) Develop and maintain written personnel policies and a wage scale for each job classification;

(g) Designate a supervisor to assure that staff providing adult day services are provided supervision;

(h) Comply with applicable district administrative policies and procedures and service contracts;

(i) Provide access for staff of the district and cabinet for monitoring and evaluation purposes;

(j) Notify a case manager should the service needs of the client change due to a change in the client's:

1. Health;
2. Support services;
3. Family; or
4. Caregiver; and

(k) Develop for district approval policy and procedure.

1. For a client's referral for service to other appropriate programs and services currently provided in the district;

2. To reach a prospective client through community education and outreach activities;

3. For volunteer programs to be utilized;

4. For the periodic monitoring of a client for the appropriate-ness of adult day services and to assure safety and consistency;

5. For acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

6. For the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3); and

7. For the manner in which delivery of adult day services shall be provided to an eligible individual.

(2) The service provider shall establish written policies and procedures to meet the following program requirements for adult day center respite services:

(a) Establish a schedule of days and hours of operation so that the program operates, at a minimum, four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(b) Post the scheduled days and hours of operation in a conspicuous place and provide a written copy to the client and caregiver;

(c) Supervise program activities which shall be provided by staff or volunteer personnel meeting staff requirements as set forth in Section 9 of this administrative regulation;

(d) Provide a balance of planned individual and group activities to meet a client's needs, abilities, and interests as determined by the individual plan of care;

(e) Provide an inventory of each client's interests and personal history;

(f) Provide a client an opportunity to plan and evaluate activities on a monthly basis;

(g) Provide a client with a choice of activities and an opportunity to refuse to participate in the activity;

(h) Post a monthly calendar of planned activities and available services in a conspicuous place and retain it on site for a minimum of two (2) years for monitoring purposes;

(i) Provide assistance, if necessary, with activities of daily living [as defined in KRS 404A.700(1)], including:

1. Walking; and
2. Personal hygiene;

(j) Provide assistance with self-administration of medications [as defined by KRS 404A.700(9)];

(k) Provide a meal that complies with 910 KAR 1:190 if operating during normal meal time.

(l) Allow a client, as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(m) Provide transportation, if necessary, for activities of daily living to the extent financially feasible;

(n) Post a monthly calendar of menus in a conspicuous place if meals are provided; and

2. Maintain menus for monitoring purposes for a minimum of two (2) years;

(o) Provide information and make appropriate arrangements for medical care with the client's physician or hospital for an accident or medical emergency;

(p) Notify the family or other appropriate person of any significant changes in the client's mental or physical condition;

(q) Refer a client to a health professional of the client's choice, as needed;

(r) Establish linkages with another community agency or institution to better coordinate services;

(s) Assist the client and the client's family in identifying and accessing a community agency for:

1. Financial;
2. Social;
3. Recreation;
4. Educational;
5. Medical; and
6. Other services;

(t) Assist the family in arranging transportation;

(u) Notify the district immediately of a negative incident or accident involving a client, staff member or volunteer;

(v) Comply with provisions of KRS 412.1420, Section 11, for self-administration of medications; and

(w) Have written complaint procedures that shall:

1. Include the address and phone number of the department;
2. Be posted in a conspicuous place; and
3. Be provided to each client; and

(x) Provide a written report to the district in response to a complaint as requested.

(3) An adult day health center shall:

(a) Be monitored and licensed by the Office of the Inspector General; and

(b) Comply with licensure requirements for adult day health services in accordance with 902 KAR 20:066.

(4) In-home respite care service providers shall:

(a) Establish with the client and caregiver a monthly schedule of days and hours of service based on the assessment, plan of care, and agreement with the client and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the client and program activities as determined by the assessment and plan of care for adult day services.
Section 7. District Responsibilities. A district shall submit to the
cabinet a proposal within its area plan to include at least the follow-
ing:
(1) An assurance of access to records of the district pertaining
to its contract for delivery of adult day services;
(2) A plan for the delivery of adult day services in the area to
be served by the district including identification of services currently
provided in the district;
(3) A provision for case management and assistance for adult
day services;
(4) A policy and procedure for implementation of case man-
agement and assessment services;
(5) A policy and procedure for assuring a client’s eligibility in
accordance with Section 2 of this administrative regulation;
(6) Assurance of a number of proposed clients for adult day
services to be provided that complies with the minimum require-
ments of KRS 205.010(15);
(7) A cost unit of service to be used as a basis for determining
an applicable percentage for the fee schedule as established in
Section 4 of this administrative regulation;
(8) A policy and procedure for monitoring a subcontract for
delivery of direct adult day services;
(9) Approval of policies and procedures of the service provider
required by Section 6(1)(k) of this administrative regulation; and
(10) A policy and procedure assuring that the assessment
required by Section 3(1)(a) of this administrative regulation shall
include the following information submitted electronically to the
department in the formats prescribed by the Aging Services Track-
ning System:
(a) Demographic information, including family income;
(b) Physical health;
(c) Activities of daily living and instrumental activities of daily
living;
(d) Physical environment;
(e) Mental and emotional status;
(f) Assistive devices, sensory impairment, and communication
abilities;
(g) Formal and informal resources; and
(h) Summary and judgment.

Section 8. Facility Requirements. An adult day care and Alz-
heimer’s respite program provider operating a facility for service shall:
(1) Comply with requirements outlined in 902 KAR 20:006 for a
licensed adult day health center, if offering adult day health services;
(2) Locate the adult day-care center in a geographic area that
provides convenient access to a majority of older persons;
(3) Locate, design, and furnish the adult day-care center to be
readily accessible to and usable by individuals with disabilities;
(4) Provide sufficient space and arrangements of furnishings to
allow for:
(a) Adequate client movement;
(b) Program activities;
(c) Food service; and
(d) Socialization;
(5) Provide sufficient private office space to permit individual
counseling and confidential maintenance of records;
(6) Provide appropriate lighting, heating, cooling and ventilation
for client comfort and program activities;
(7) Provide covered leak-proof garbage disposal units for the
kitchen;
(8) Equip each adult day-care center with bathroom facilities
meeting the following requirements:
(a) A minimum of one (1) toilet and one (1) sink for each ten
(10) clients;
(b) Readily accessible and usable by individuals with disabili-
ties;
(c) In men’s bathrooms urinals may be substituted for up to
one-half (1/2) the number of toilets required; and
(d) Bathroom facilities that shall:
1. Be cleaned and sanitized daily or more often, if needed,
    which shall be documented by a cleaning log located in the bath-
room; and
2. Contain:
   a. Hot and cold running water;
   b. Mirror;
   c. Soap;
   d. Towels or electric hand dryers; and
   e. Leak-proof garbage disposal units that are emptied and
cleaned daily;
(9) Comply with applicable local housing and health codes;
(10) Comply with zoning requirements;
(11) Obtain initial and annual inspection by state or local fire
safety officials and comply with requirements;
(12) Maintain at least one (1) fully operational fire extinguisher
(with initial and annual inspection tags);
(13) Maintain a fully equipped first aid kit, with unexpired con-
tents, as recommended by the American Red Cross;
(14) Provide identifiable space during hours of operation, for a
client in need of a more private environment or rest area; and
(15) Provide separate identifiable space during operational hours
if co-located in a facility housing other services.
(b) The following space may be shared with other services:
   1. Dining room;
   2. Kitchen; and
   3. Recreation area (Therapy room).

Section 9. Program Staff. (1) Staffing requirements for a certi-
fied adult day-care center shall include:
(a) Trained and experienced staff who shall be present each
day of operation;
(b) At least two (2) staff members at the adult day-care center
at times when there is more than one (1) client in attendance, one
(1) of whom shall be a paid staff member;
(c) Staffing ratios that shall be:
   1. One (1) staff member for one (1) client in attendance;
   2. Two (2) to ten (10) staff members if two (2) clients are in attendance;
   3. Three (3) staff members if three (3) to eleven (11) clients to
      fifteen (15) clients are in attendance; and
   4. One (1) staff member for each five (5) additional clients over
      fifteen (15) clients;
(d) Except for a director, volunteer personnel may be included in
the staff ratio, if volunteer personnel meet the staff qualifications and
training requirements of this administrative regulation;
(e) At least one (1) staff member who has completed cardi-
opulmonary resuscitation certification by the American Heart Asso-
ciation or American Red Cross present when clients are in attendance;
and
(f) A criminal records check that shall be obtained on a poten-
tial employee prior to the employee’s data of hire in accordance with
KRS 216.787.
(2) Staff qualifications for programs shall be as follows:
(a) A director of an adult day-care center shall be:
   a. A trained professional (social worker) possessing:
      (i) A minimum of a bachelor’s degree in social work, nursing or
      a related field relevant to geriatrics and one (1) year of (two (2) years)
      professional experience in working with the elderly; or
      (ii) A master’s degree in social work or a related field relevant
      to geriatrics and six (6) months professional experience working
directly with the elderly;
   b. A registered or practical nurse licensed in Kentucky with
      three (3) years (two (2) years) professional experience working directly
      with the elderly while an employee of a:
      (i) Home health agency;
      (ii) Long-term care facility;
      (iii) Public health agency; or
      (iv) Social service agency; or
   c. An individual at least twenty-one (21) years of age with:
      (i) A high school diploma or GED certificate; and
      (ii) A minimum of two (2) years of college (or equivalent train-
      ing) with at least three (3) years (two (2) years) of professional expe-
      rience in working directly with the elderly.
   2. Professional experience that includes working directly with
      the elderly while an employee of a public or private health or social
      service agency may substitute for professional education to equal
a minimum of five (5) years [on a year-for-year basis].

(b) A case manager for adult day services shall meet the same qualification requirements specified in paragraph (d) of this subsection.

(c) Administrators of licensed adult day health programs shall meet the requirements of 902 KAR 20 066.

(d) Staff responsible for assessments or case management for participants shall:

1. Have a bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;
2. Have a bachelor's or master's degree in nursing with a current Kentucky nursing license, no experience required;
3. Have a bachelor's degree in a field not relevant to geriatrics with two (2) years of paid or volunteer experience in working with the elderly;
4. Be a Kentucky registered nurse with a current Kentucky license and two (2) years of experience working with the elderly; or
5. Be a licensed practical nurse with a current Kentucky license and three (3) years of paid or volunteer experience working with the elderly.

(3) Upon employment, a tuberculosis screening shall be conducted in accordance with current Center for Disease Control and Prevention standards and repeated annually thereafter. (a) Tuberculosis testing shall be conducted and testing records maintained in accordance with 902 KAR 20 000, Section 7.

(b) An annual screening shall be required.

(4) Staff or volunteer personnel who contract an infectious disease listed in 902 KAR 20 020 shall not be sent to work until:

(a) The infectious disease can no longer be transmitted; and
(b) He or she provides a physician's statement authorizing a return to work.

(3) In-home respite staff shall meet the requirements of subsection (6) of this section [paragraphs (a) through (f) of this subsection] and shall:

(a) Be twenty-one (21) years of age if working independently; or
(b) If working as a team to provide direct services, have one (1) member at least twenty-one (21) years of age and the other staff member at least eighteen (18) years of age.

(5) Training of staff shall be provided by a professional familiar with the subject matter as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive a minimum of six (6) hours of orientation to the program and adult day-care center, explained verbally and in writing, to include:

1. Program objectives;
2. Program policies and procedures;
3. Health, sanitation, emergency, and safety codes and procedures;
4. Client confidentiality; and
5. Personnel policies and procedures;
6. Policies and procedures that shall be explained verbally and provided in writing;
(c) Prior to the expiration date of the current certification.

(b) Within one (1) month of employment, all staff shall be trained and certified in cardiopulmonary resuscitation;

(c) Within three (3) months of employment, staff shall be provided a minimum of thirty-four (34) hours of basic training that includes:

1. The aging process;
2. Interpersonal communications;
3. Personal care services;
4. First aid;
5. Identifying and reporting health problems;
6. Stress management;
7. Recognizing and reporting suspected adult abuse, neglect, or exploitation consistent with KRS 209.030(2) and (3);
8. Universal blood and body fluid precautions;
9. Dementia, including:

   a. Causes and manifestations of dementia; and
   b. Managing a client with dementia;
10. Causes and manifestations of dementia;
11. Managing a client with dementia;
12. Crisis intervention with a combative client; and
13. Effects of dementia on the caregiver.

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:

1. On ation prior to assuming duties [within two (2) weeks of employment]; and
2. Basic training within three (3) months of employment.

Section 10. Client Records. (1) A client record shall be kept or legible written in ink with each entry dated and signed by the recorder and including the recorder's title.

(a) Each client record shall be maintained at the program site and contain:

1. A completed assessment;
2. Client notification by letter of eligibility, fees assessed, and the center's days and hours of operation;
3. A monthly [weekly] summary of any changes in the client's:
   a. Objectives and goals;
   b. Progress;
   c. Physical and mental conditions;
   d. Behaviors;
   e. Participation [Response];
   f. [Excludes];
   g. [In] Other changes or observations noted by program staff and case manager;
   h. Emergency contact information including responsible party and personal physician;
   i. Attendance record;
   j. Record of services provided by in-home or other program services;
   k. Signed authorization for client to receive emergency medical care, if necessary;
   l. Ongoing reassessment and plan of care;
   m. Signed and dated [In] medical summary and care plan, if referred on orders of a physician;
   n. Correspondence; and
   o. Closing summary.

(b) Licensed day care centers shall maintain records as required by 902 KAR 20 066.

(c) The service provider shall comply with reporting requirements of the district and the cabinet.

(d) Confidentiality of records and reports shall be in accordance with KRS 194A.060(2).

Section 11. Certification of Adult Day-Care Centers. (1) An adult day-care center shall be certified by the cabinet.

(a) An authorized representative of the department shall have the authority to inspect premises and records required by this administrative regulation and may request assistance from the local health department upon receipt of a complaint.

(b) Application for certification shall be made by filing a DAIL-ADC 900, Application for Adult Day-Care Center Certification, with the Cabinet for Health and Family Services, Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(4) (a) Renewal of certification shall be made biennially.
(b) A renewal application shall be submitted sixty (60) days prior to the expiration date of the current certification.

(5) (a) Compliance with the health, safety, and treatment standards established in this administrative regulation shall be documented on a DAIL-ADC 901, Adult Day-Care Certification Check List.
(b) Documented compliance shall be confirmed by an unannounced inspection pursuant to KRS 209.955 conducted by the department.
(c) Regulatory violations identified during an inspection shall be transmitted in writing to the adult day-care center within fifteen (15) business days of the inspection.
(b) The adult day-care center shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting
agency within fifteen (15) business days of receiving the department's statement of noncompliance.  
1. The plan shall specify the dates by which each of the violations shall be corrected.  
2. The department shall review the plan and within fifteen (15) days of receipt of the plan for compliance:  
a. Notify the adult day-care center whether the plan is acceptable or not, in writing;  
b. If acceptable, issue a certificate certifying the adult day-care center for a two (2) year period; and  
c. If unacceptable, specify the reasons.  
3. If the department notifies the adult day-care center that the plan is unacceptable, the center shall amend the plan for compliance and resubmit it within fifteen (15) business days.  
4. The department shall determine after reviewing the amended plan of compliance that certification shall be denied, the department shall, within ten (10) business days of the determination:  
(a) Notify the adult day-care center of the determination;  
(b) Notify the adult day-care center of the opportunity for an informal dispute resolution meeting between the department and a representative of the adult day-care center to be held within fifteen (15) days of the adult day-care center's receipt of the notice;  
(c) Provide the center with any supporting documentation or materials regarding an issue of noncompliance; and  
(d) Notify the adult day-care center of its appeal rights in accordance with Section 12 of this administrative regulation.  
Section 12. Appeal Procedures. (1) If certification of an adult day-care center has been denied or revoked, the applicant shall be notified in writing of the right to appeal. The department shall send the notice by certified mail within ten (10) days of the determination.  
(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days, pursuant to KRS 205.350, after receipt of the notice.  
(3) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.  
(4)(a) If the denial or revocation is upheld by the secretary, the commissioner of the department or representative shall specify the date by which the adult day-care center shall close.  
(b) The center shall be notified in writing in accordance with KRS 13B, 120.  
(5) An adult day-care center may appeal a final decision to the circuit court within thirty (30) days after the final order is mailed or delivered, in accordance with KRS 13B, 140(1)(c)(1)(c)(d).  
Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:  
(a) "DAIL-ADC-900, Application for Adult Day-Care Center Certification" edition 7/08/92[304]; and  
(b) "DAIL-ADC-901, Adult Day-Care Certification Checklist" edition 7/08/92[304].  
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.  
DEBORAH S. ANDERSON, Commissioner  
JANIE MILLER, Secretary  
APPROVED BY AGENCY: May 12, 2008  
FILED WITH LRC: May 12, 2008 at 5 p.m.  
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.  
CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community-Based Services  
Division of Family Support  
(As Amended at ARRS, July 8, 2008)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2025 and 7 C.F.R. 271.4 authorize[authorizes] the cabinet to administer a Food Stamp Program and specifies the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.045(1) designates the cabinet as a voter registration agency in accordance with 42 U.S.C. 1973aa-5[1973aa-10]. This administrative regulation establishes the application and voter registration processes[procedures] used by the cabinet in the administration of the Food Stamp Program and the policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or decline to register, to vote.  
Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) [food-stamp office in person during office hours.  
(2) The cabinet shall make the application process readily accessible to a household.  
(3) In accordance with the procedures described in KAR 1:070, interpreter services shall be provided for a person who is:  
(a) Deaf; or  
(b) Hard of hearing  
(4) In accordance with 42 U.S.C. 2000d, interpreter services shall be provided for a person who is Limited English Proficient.  
(5) An application shall be considered filed if a KIM-77, Intent to Apply, or a KIM-100, KAMES Application, containing the name, address, and signature of the applicant and any applicable supplements, is received by a DCBS office.  
(6) An application shall be processed after the:  
(a) Applicant or representative is interviewed;  
(b) Required information on the application, KIM-100 and supplements, is provided to the food-stamp office and verified; and  
(d) The application is received by the appropriate office.]  
Section 2. Who May Sign an Application. An application for food stamps shall be signed by:  
(1) An adult or emancipated child who is a responsible member of the household; or  
(2) The household's authorized representative.  
Section 3. Where an Application Is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office [or the Department for Community-Based Services] and processed in the county in which an applicant resides.  
(2) A concurrent application for Supplemental Security Income (SSI) or SSI] and Food Stamps shall be filed in the service area office of the Social Security Administration.  
Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household[.] that completes the initial food
stamp application process[4] an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or
(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C F R 273:20 for expedited services shall be as:

(1) Household in which:
   (a) Monthly gross income is less than $150, and
   (b) Liquid resources do not exceed $100; or
(2) Destitute migrant or seasonal farm work household whose liquid resources do not exceed $100; or
(3) Household for whom monthly rent or mortgage and actual utilities exceed the household’s combined monthly gross income and liquid resources.

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program (KTAP) or K-TAP shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall apply to a public assistance application. A public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 4.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:
   (a) The entire household is: 1. Institutionalized; or
   2. Disqualified from receiving food stamps; or
   (b) A household member is ineligible due to a drug-related felony conviction.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under temporary assistance for needy families (TANF) or TANF shall be considered categorically eligible unless:
   (a) The entire household is: 1. Institutionalized; or
   2. Disqualified from receiving food stamps; or
   (b) A household member is ineligible due to a drug-related felony conviction.

(5) A categorically eligible household shall not be required to verify the following eligibility factors:
   (a) Resources;
   (b) Gross and net income limits;
   (c) Social Security number information;
   (d) Sponsored alien information; and
   (e) Residency.

Section 7. Joint SSI and Food Stamp Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and food stamps as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116:048 and 42 U.S.C. 1973z-5, a food stamp 172ppg:90, any applicant or recipient shall be provided the opportunity to complete an application to register to vote or update [his] current voter registration., which includes the explanation and signing of a PAIFS-706 Form, if the applicant or recipient is:
   (a) Age eighteen (18) or over; and
   (b) Present in the office at the time of the interview or when a change of address is reported; and
   (c) Not registered to vote or not registered to vote at his current address.

(2) PAIFS-706, Voter Registration Rights and Declaration, shall be utilized to document a Food Stamp Program applicant or recipient’s choice to:
   (a) Register to vote or
   (b) Not register to vote.

(3) A voter registration application issued by the Board of Elections shall be completed if a Food Stamp Program applicant or recipient wants to:
   (a) Register to vote; or
   (b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All shall not be registered to vote in this process, including any:
   (a) Authorized representative; or
   (b) Individual acting as a responsible party.

(6) An individual providing voter registration service who seeks to unlawfully influence an applicant’s political preference or party registration as prohibited by KRS 116:048(1) may be fined or imprisoned, not to exceed five (5) years, or both.

(7) A form and information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(8) Only a Board of Elections official may view and information utilized directly in the voter registration process.

(9) Completion of the "Voter Registration Application for U.S. Citizens Only, Form shall be only an application to apply to register to vote. The State Board of Elections must approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KIM-77, Intent to Apply", edition 8/08/14/07;
(b) "KIM-100, KAMES Application", edition 8/08/14/07;
(c) "KIM-100, Supplement A, Representative/Interested Party", edition 8/08/14/07;
(d) "KIM-100, Supplement B, Utility/Shelter Information", edition 8/08/14/07;
(e) "KIM-100, Supplement C, Additional Members/Striker and Boarder Information", edition 8/08/14/07;
(f) "KIM-100, Supplement D, Farm/Self-Employment/Rental Income", edition 8/08/14/07;
(g) "KIM-100, Supplement E, Vehicles", edition 8/08/14/07;
(h) "KIM-100, Supplement F, Emergency Shelter/Foster Care", edition 8/08/14/07;
(i) "KIM-100, Supplement G, Members General Information", edition 8/08/14/07;
(j) "KIM-100, Supplement H, IM Alien Information", edition 8/08/14/07;
(k) "KIM-100, Supplement I, State Supplementation/Pass Through", edition 8/08/14/07;
(l) "KIM-100, Supplement J, Long Term Care", edition 8/08/14/07;
(m) "KIM-100, Supplement L, General Depetration", edition 8/08/14/07;
(n) "KIM-100, Supplement M, Incapacity/Unemployment", edition 8/08/14/07;
(o) "KIM-100, Supplement N, Depetration", edition 8/08/14/07;
(p) "KIM-100, Supplement P, DSCIDCSE Cooperation/Absence Verification", edition 8/08/14/07;
(q) "KIM-100, Supplement PP, AP Referral", edition 8/08/14/07;
(r) "KIM-100, Supplement Q, KWP/Work Registration", edition 8/08/14/07;
(s) "KIM-100, Supplement R, Earned Income", edition 8/08/14/07;
(t) "KIM-100, Supplement S, Unearned Income", edition 8/08/14/07;
(u) "KIM-100, Supplement SS, Lump Sum/Pass Income", edition 8/08/14/07;
(v) "KIM-100, Supplement T, Resources", edition 8/08/14/07;
(w) "KIM-100, Supplement U, Medical Expenses", edition 8/08/14/07;
(x) "KIM-100, Supplement V, Health Insurance", edition 8/08/14/07;
(y) "KIM-100, Supplement W, KAMES-Integration Supplement - Lock-In & KenPAC", edition 8/08/14/49G;
(z) "KIM-100, Supplement X, IM Nonmember", edition 8/08/14/49G;
(2a) "KIM-100, Supplement XX, KAMES-Integration Supplement - FS Nonmember", edition 8/08/14/49G;
(b) "KIM-100, Supplement Y, Student Information", edition 8/08/14/49G; and
(2c) "PASF-706, Voter Registration Rights and Declination", edition 8/08/08/411;
(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.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: May 12, 2008
FILED WITH LRC: May 12, 2008 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARR5, July 8, 2008)

922 KAR 1:310. Standards for child-placing agencies.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1), 516.060.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services 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. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150(1) permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:
(a) Incidents;
(b) High risk behaviors; and
(c) Needs.
(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.
(3) "Aftercare" means services provided to the child after discharge from a child-placing agency.
(4) "Applicant" means an individual or a family subject to approval by the child-placing agency as a: (a) Foster home; or
(b) Adoptive home.
(5) "Board of directors" is defined by KRS 273.161(7).
(6) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.
(7) "Child" is defined by KRS 199.011(4) and 600.020(8) and may include: (a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(5) or 620.140(1)(d); or
(b) A child who meets the exceptions to the age of majority in accordance with KRS 205.015.
(8) "Child-placing agency" is defined by KRS 199.011(7).
(9) "College or university" means:
(a) An institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education. Office of Postsecondary Education.
(b) For a Kentucky institution, one that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education.
(c) For an out-of-state institution, one that is licensed in its home state if licensure is required in that state.
(10) "Community resource" means a service or activity available in the community that supplements or fills in the gap provided by the child-placing agency in the care and treatment of a child.
(11) "Director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.
(12) "Foster home" means:
(a) A "foster family home" as defined by KRS 199.011(9) and 600.020(26), if referring to a physical structure; or
(b) Any individual approved as a foster parent by the cabinet, if referring to an individual.
(13) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.
(14) "Independent living program" means a planned program that:
(a) Is licensed by the cabinet and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and
(b) Meets requirements specified in Section 17(1) of this administrative regulation.
(15) "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.
(16) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.
(17) "Licensed health care professional" is defined by KRS 216.300(1).
(18) "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350.
(19) "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.
(20) "Placement" means a foster or adoptive home that has been approved by completing an application process, home study and required preparation.
(21) "Program director" means the person responsible for supervising the day-to-day operation of the program.
(22) "Respite care" means temporary care provided by another individual or family to:
(a) Provide relief to a foster care parent, therapeutic foster care parent, or medically-fragile foster parent; or
(b) Allow an adjustment period for the child placed in out-of-home care.
(23) "Sex crime" is defined by KRS 17.500(8).
(24) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.
"Social services worker" means a person who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

"Supervision Plan" means a written supplement to a child’s ITP, developed pursuant to Section 6(7)(b)(2) of this administrative regulation, that details a child-placing agency’s roles and responsibilities to assure adequate supervision of a child in the agency’s care, including those roles and responsibilities delegated to a foster home parent.

"Therapeutic foster care" is defined by KRS 156.135(1)(c).

"Therapeutic services" means clinical or support services provided to a child with severe emotional or behavioral needs.

"Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

(b) An independent living program shall be an optional component of the child-placing agency’s license.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agency with the cabinet to provide private child care services, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or
2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that shall:

(a) Consist of a minimum of seven (7) members;
(b) Meet at least quarterly;
(c) Cause minutes of the meeting to be taken and kept in written form;
(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;
(e) Approve a mission statement delineating the:
   1. Purpose;
   2. Objective;
   3. Scope of services to be provided; and
   4. Intake policy specifying the type of child to be accepted for care;

(f) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

(g) Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:
   1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency’s written policies and procedures;
   2. Oversee all aspects of the child-placing agency; and
   3. Report to the board, on a quarterly basis, the following:
      a. Evaluation of program services;
      b. Measurement of attainment of the objective[s] established pursuant to subsection (2)(a) of this section;
      c. Staff training; and
      d. Incident reports.

(b) The criteria and process of the [the] evaluation required in paragraph (a) shall be approved by the board annually.

(c) If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications:

1. A master’s degree from a college and university in any of the following human services fields:
   (i) Social work;
   (ii) Sociology;
   (iii) Psychology;
   (iv) Guidance and counseling;
   (v) Education;
   (vi) Religious education;
   (vii) Business administration;
   (viii) Criminal justice;
   (ix) Public administration;
   (x) Child-care administration;
   (xi) Nursing;
   (xii) Family studies, or
   (xiii) Another human service field related to working with families and children; and
2. Two (2) years of work experience in a human services program; or

3. A bachelor’s degree with a major in a discipline designated in subparagraph 1 of this paragraph; and

(b) and] Four (4) years work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master’s degree from a college and university in social work or in a discipline designated in paragraph (a) of this subsection;

2. A bachelor’s degree from a college and university in social work or in a discipline designated in paragraph (a) of this subsection; and

3. At least two (2) years professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for social work, counseling or planning and coordinating services to a child; and

2. Hold at least a bachelor’s degree from a college and university in social work or in a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program;

2. Hold at least a master’s degree from a college and university in a human services discipline; and

3. Have at least five (5) years total experience in mental health treatment, with a minimum of three (3) years experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e) A child-placing agency contracting for the service of a social services worker not on the staff of the child-placing agency shall obtain documentation that the social services worker meets the qualifications in paragraph (c) of this subsection.

2. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social services worker.

(f) The program director shall supervise social service staff.

(g) In a therapeutic foster care program, a person meeting the qualifications of a treatment director shall carry out approval and evaluation of services [shall be carried out by a person meeting the qualifications of a treatment director].

(h) Social services staff shall not carry a caseload of more than twenty (20) children.

(5) Personnel policy.

(a) A child-placing agency shall have and comply with written personnel policies and procedures.

(b) An employee shall:

1. Be at least eighteen (18) years of age;

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470; and

3. Submit to a new criminal background check in accordance with KRS 17.165 and central registry check in accordance with 922 KAR 1:470 (at least) once every two (2) years.

(c) If a substantiated allegation of abuse, neglect, or exploitation of a child has been made against a person, a child-placing agency shall not employ the person or allow the person to work with children. A person against whom there has been a substantiated
allegation of abuse, neglect, or exploitation, or a child shall not be employed or volunteer in a position involving direct contact with a child.

2. The cabinet shall respond to allegations of abuse, neglect, or exploitation of a child in accordance with KRS 615.030 to 615.040 and KAR 1:490.

(a) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;
2. Evidence of qualifications, including degree from a college and university, current registration, certification, or licensure;
3. Record of participation in staff development;
4. Record of performance evaluation;
5. Criminal records and central registry checks pursuant to paragraph (b)(2) and (3) of this subsection;
6. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures;
7. Personnel action;
8. Application for employment, resume, or contract; and

(e) The child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(f) An employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation in accordance with KRS 615.030 to 615.040 shall:

1. Be immediately removed from contact with a child; and
2. Not be allowed to work with the child until:
   a. A prevention plan has been written and approved by a designated regional cabinet staff;
   b. The person is cleared of the charge, or
   c. A cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child:
      (i) Abuse;
      (ii) Neglect; or
      (iii) Exploitation.

(g) Unless the volunteer is a practicum student, a volunteer who performs a similar function as paid staff described in subsection (4) of this section shall meet the same requirements and qualifications.

(h) Practicum students and volunteers shall submit to a background check and any other mandatory requirements listed in subsection (5)(b) and (c) of this section.

(i) A current personnel record shall be maintained for a practicum student or volunteer that includes the following:

1. Name, address, Social Security number, starting date, and date of birth;
2. Evidence of qualifications if the volunteer performs a similar function as paid staff; and
3. Criminal records and central registry checks pursuant to paragraph (h) of this subsection.

Section 3. Interstate Placement. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with:

(a) KRS 615.030 to 615.040, Interstate Compact on Placement of Children;
(b) KRS 615.010, Interstate Compact Regarding [on] Juveniles; and
(c) 42 U.S.C. 671(a)(23).

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by a child-placing agency personnel, the child-placing agency shall obtain prior consent of designated regional cabinet staff.

(3) A child-placing agency shall comply with subsection (1) of this section if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or
(b) The child's school vacation period.

(4) If an emergency placement of a child into a licensed child-placing agency is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040 [shall be the responsibility of the placement source].

Section 4. Evaluation of an Applicant. (1) A child-placing agency's social services staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall:

(a) Complete a home study; and
(b) Approve the home prior to the placement of a child.

(3) Documentation of the home study shall include the following:

(a) A personal interview with each member of the applicant's household;
(b) An assessment of the attitude of each member of the applicant's household toward the placement of a child into the home or adoption;
(c) Observations of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;
(d) The applicant's ability to accept a child's relationship with the child's family of origin;
(e) Proof of the applicant's:
   (i) Identity, such as a federally or state-issued photo identification card;
   (ii) Age of twenty-one (21) years or older, unless an exception is granted pursuant to subsection (4) of this section; and
3. United States citizenship, such as a birth certificate, or legal alien status, such as a permanent resident card, as described in 8 U.S.C. 1151;

(4) A statement for each member of the applicant's household that shall be signed by a licensed physician or licensed health care professional verifying that the individual:
   1. Is free of a communicable or infectious disease; and
   2. Has no illness or condition that would present a health or safety risk to a child placed in the applicant's home;

(g) A signed statement by a licensed physician or licensed health professional regarding the applicant's physical ability to provide necessary care for a child;

(h) Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or
2. Adoption assistance;
(i) The name of three (3) personal references who:
   1. Are not related to the applicant; and
   2. Shall be interviewed by the child-placing agency staff in person or by telephone; or
   (j) Shall provide letters of reference for the applicant; and
3. The applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures;
4. Documentation of any interview with an adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history;

(i) If applicable, verification from the applicant regarding a:
   1. Previous divorce;
   2. Death of a spouse; and
   3. Present marriage;
   (m) If the child does not have custody of the applicant's own child:
   1. A copy of a visitation order;
   2. A copy of a child support order; and
   3. Proof of current payment of child support;

(n) Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household in accordance with criteria established in KAR 1:490;

(o) Documentation that the applicant has access to:
   1. Transportation that meets the child's needs;
   2. School;
   3. Recreation;
   4. Medical care; and
   5. Community facilities;

(p) If an applicant or household member will be transporting a foster child, proof that the individual possesses a valid driver's license and has automobile or driver's insurance coverage;

(q) Documentation that the applicant's home:
   1. Does not present a hazard to the health and safety of a child,
2. Is well heated and ventilated;
3. Complies with state and local health requirements regarding water and sanitation; and
4. Provides in- or out-of-door recreation space appropriate to the developmental needs of a child placed in the applicant's home;
   (n) Verification that:
   1. No more than four children, including the applicant's own children, shall share a bedroom; and
   2. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency;
   (a) Verification that an individual bed:
   1. Is provided for each child in the home;
   2. If the child is under age one (1), is a crib that meets the Consumer Products Safety Commission Standards pursuant to 16 C.F.R. 1506 and 1509; and
   3. Is age and size appropriate for the child;
   (t) Verification that:
   1. Medication is locked, unless an exception is granted pursuant to subsection (10) of this section; and
   2. The following are inaccessible to a child:
      a. Alcoholic beverages;
      b. [and] poisonous or hazardous materials [are inaccessible to the child]; and
      c. Ammunition and firearms in accordance with KRS 527.100 and 527.110 [are locked and stored separately];
   (u) Proof that the applicant has:
   1. First aid supplies with unexpired dates available and stored in a place easily accessible by the foster parent;
   2. A working telephone; and
   3. A working smoke alarm within ten (10) feet of each bedroom;
   (v) If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:
      1. Hours of operation;
      2. Type of business; and
      3. Clientele; and
   (w) If an applicant was approved to foster or adopt a child by another child placing agency or the cabinet and the applicant's home was closed, verification of the closure and a statement to indicate whether the closure was at the request of the applicant or agency [previously denied or approval to foster or adopt a child by another child placing agency or the cabinet, verification of the denial or closure, and indication of whether the closure was at the request of the foster parent or agency.
   (4) Exception to subsection (3)(e) of this section shall be granted if the applicant is:
   (a) Between eighteen (18) and twenty-one (21) years of age;
   (b) A relative of the child to be placed in the applicant's home; and
   (c) Able to meet the needs of the child to be placed in the applicant's home.
(5) For each potential applicant evaluated, the child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.
(6a) Following approval as a foster home, the approving child-placing agency may request written approval from the state agency with custody of the child, for the foster home to provide services as a certified:
1. Provider of Supports for Community Living in accordance with 907 KAR 1:14S;
2. Therapeutic foster care provider for adults in accordance with 907 KAR 3.030; or
3. Family child care home in accordance with 922 KAR 2 100.
(b) Except as provided in paragraph (a) of this subsection, an approved foster home shall not simultaneously:
1. Provide day care center services in accordance with 922 KAR 2 030; and
2. Be used as a licensed or certified health care or social service provider.
(7) An employee of the department who provides protection and permanency services shall be prohibited from becoming a foster parent or respite care provider for a child in the custody of the cabinet, unless the:
(a) Employee was a foster parent or respite care provider for the child at the time employment with the department in protection and permanency services began; and
(b) Commissioner approves, in writing, the employee to be a foster parent or respite care provider for the child.
(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the:
(a) Employee had:
   1. No relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625, unless the employee is a relative of the child; or
   2. Adopted a sibling of the child available for adoption; and
(b) Commissioner approves, in writing, the employee to adopt.
(9a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as:
1. A foster parent;
2. An adoptive parent; or
3. A respite care provider.
(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:
   1. A conflict of interest;
(10) A child-placing agency may make an exception to subsection (3)(d) of this section if:
(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;
(b) The child is learning to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; and
(c) Measures are taken to prevent unauthorized access by another child in the same home.
(11) If an applicant is approved as a foster home, adoptive home, or respite care provider by a state agency or another child placing agency, a child-placing agency shall:
(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section; and
(b) Document that the applicant meets training requirements in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; and
2. If the applicant lacks training in accordance with subparagraph 1 of this paragraph, the child-placing agency shall, prior to placement of a child in the home:
   a. Provide training in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; or
   b. Develop an individualized curriculum to fulfill unmet training needs; and
(c) Document the applicant's compliance with the individualized curriculum.

Section 5. Orientation and Preparation of a Foster Home. A child-placing agency shall:
(1) Develop and maintain an orientation and preparation curriculum to be kept on file;
(2) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:
   a. Child-placing agency program description with mission statement;
   b. Information about the rights and responsibilities of the home; and
   3. Background information about the foster child and the child's family, including information in accordance with KRS 605.690(1)(b);
(b) An example of an actual experience from a foster parent that has fostered a child;
(c) Information regarding:
   1. The stages of grief;
   2. Identification of the behavior linked to each stage;
   3. The long-term effects of separation and loss on a child; and
   4. Permanency planning for a child, including independent

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living services;
5. The importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;
6. Family functioning, values, and expectations of a foster home;
7. Cultural competency;
8. How a child enters and experiences foster care, and the importance of achieving permanency; and
9. The importance of birth family and culture and helping children leave foster care;
(d) Identification of changes that may occur in the home if a placement occurs, to include:
   1. Family adjustment and disruption;
   2. Identity issues; and
   3. Discipline issues and child behavior management; and
   (e) Specific requirements and responsibilities of a foster parent.
(3) Maintain an ongoing foster home preparation and training program that:
(a) Provides a minimum of six (6) hours of foster home training annually; and
(b) Maintains a record of preparation and training completed.

Section 6. Placement, Case Management, and Supervision of a Child In a Foster Home, Medically-fragile Foster Home, or Therapeutic Foster Care Home. (1) A child-placing agency shall:
(a) Place a child only in an approved foster home; and
(b) Keep a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the Cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).
(2) A child-placing agency shall select a foster home for a child based upon the individual needs of the child, including:
(a) The child's assessment and ITP, if available; and
(b) Any information concerning the child's needs in placement; and
(c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section, or another child in the foster home.
(3) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstances necessitating placement justify the child's participation.
(4) Unless an exception is granted pursuant to subsection (6) of this section, a child-placing agency shall not exceed six (6), including the foster parent's own children.
(b) The number of children residing in a foster home that cares for a child in the custody of the cabinet shall not exceed five (5), including the foster parent's own children.
(5) Unless an exception is granted pursuant to subsection (6) of this section, a child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.
(6) For an exception to subsection (4)(a) or (5) of this section shall be:
(a) Documented in the foster parent file; and
(b) Authorized by the program director.
(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a written justification for an exception to subsection (4)(b) or (5) of this section in accordance with 922 KAR 1:350, Section 2(2).
(7) The child-placing agency shall:
(a) Assess a child to be placed in foster care;
(b) Within thirty (30) days of a child's placement, develop:
   1. An ITP based upon the individual needs of the child and, if appropriate, the child's family, which addresses the:
      a. Visitaton, health, and educational needs of the child;
      b. Child's permanency goals and related objectives;
      c. Methods for accomplishing each goal and objective; and
d. Designation of an individual or individuals responsible for completion of each goal and objective; and
   2. A supervision plan for the child which:
      a. Is attached to the child's ITP;
      b. Identifies the current supervision needs of and expectations for the child based upon the child's recent and past:
         (i) Incidents;
         (ii) High-risk behaviors; and
         (iii) Needs identified in the assessment conducted pursuant to paragraph (a) of this subsection;
      c. Includes goals and objectives for the child's improvement with tasks assigned to the child-placing agency and foster home parent;
      d. Is signed and dated by the social service worker and foster home parent; and
      e. Remains a part of the child's record;
   (c) Review a child's ITP and supervision plan on a quarterly basis or more frequently as the child's needs or circumstances dictate;
   (d) Have a written agreement with the foster home stating the:
      1. Responsibilities of:
         a. Child-placing agency; and
         b. Foster home; and
      2. Terms of each placement;
   (e) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;
   (f) Document a placement in the foster home file;
   (g) Report immediately to the state agency[] which has custody of the child, if there is:
      1. A life-threatening accident or illness;
      2. An absence without official leave;
      3. A suicide attempt;
      4. Criminal activity by the child requiring notification of law enforcement;
      5. Death; or
      6. Possession of a deadly weapon by a child;
   (h) Report, if applicable, within two (2) business days to the state agency[[] which has custody of the child, if there is:
      1. Change in address;
      2. Change in the number of people living in the home; or
      3. Significant change in the foster home, such as changes in health or income status of an individual living in the foster home;
   (i) Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in Section 2(4)(c) of this administrative regulation to:
      1. Include:
         a. Frequency of an in-home visit with the foster parent;
         b. Means of supervision;
         c. Methods of supervision; and
         d. Personnel conducting the supervision;
      2. Ensure a foster child's placement stability and safety; and
      3. Be individualized, as needed, for the:
         a. Child, or
         b. Foster home;
   (j) Identify and make available necessary supports to a foster home, including:
      1. A plan for respite care in accordance with Section 13 of this administrative regulation;
      2. Twenty-four (24) hour crisis intervention; and
      3. A foster home support group;
   (k) Assure that a child receives care and services, including independent living services:
      1. In accordance with Section 16 of this administrative regulation; and
      2. As prescribed by the child's needs as assessed in the child's ITP;
   (l) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;
   (m) Inform the foster parent, in accordance with KRS 605.090(4)(b), of:
      1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and
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2. Any behaviors of the child that indicate a safety risk for the placement;
   (n) Document each effort to:
      1. Protect the legal rights of the family and the child; and
      2. Maintain the bond between the child and the child’s family, in accordance with the child’s permanency plan;
      (o) Assure that a child shall have, for the child’s exclusive use, clothing comparable in quality and vanity to that worn by other children with whom the child may associate;
      (p) Be responsible for monitoring the child’s school progress and attendance;
      (q) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child’s needs;
      (r) Reassess and document quarterly, in the child’s ITP, placement and permanency goals, including independent living services, in accordance with Section 16 of this administrative regulation;
      (s) Conduct and document a face-to-face visit with the child at least once per month; and
      (t) Maintain foster care records in accordance with Section 18 of this administrative regulation.

8. Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:
   (a) Placed with a family that normally resides in another state; or
   (b) Permitted to go with a person to take up residence in another state.

9(a) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in
    the written agreement described in subsection 7(d)(7)(b) of this section.

(b) Results shall be recorded in the foster parent file.

10. Factors that shall result in a review of a foster home shall include:
   (a) Death or disability of a family member;
   (b) Sudden onset of a health condition that impairs a foster parent’s ability to care for a child placed in the home;
   (c) Change in marital status or home address;
   (d) Sudden, substantial decrease in, or loss of, income;
   (e) Child birth;
   (f) Use of a form of punishment that includes:
      1. Cruel, severe, or humiliating acts;
      2. Corporal punishment inflicted in any manner;
      3. Denial of food, clothing, or shelter;
      4. Withholding implementation of the child’s ITP;
      5. Denial of visits, telephone or mail contacts with family member(s), unless authorized by court of competent jurisdiction and
      6. Assignment of extremely strenuous exercise or work;
   (g) A report of abuse, neglect, or dependency that results in a finding that is:
      1. Substantiated, or
      2. Reveals concern regarding the care of the child;
      (h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;
      (i) If an incident reported to be reported in accordance with Sections 6(7)(g) and (h), and 12(6) and (7) of this administrative regulation, or
      (j) Other factors identified by a child-placing agency that jeopardize the physical, mental, or emotional well being of the child.

11. The documentation of a review, specified in subsection 10(c)(3) of this section, shall contain:
   (a) Identifying information;
   (b) Current composition of the household;
   (c) Description of the situation that initiated the review;
   (d) An assessment of the family functioning to determine if the child’s needs are met; and
   (e) Corrective action that may include a recommendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall:
   (a) Maintain the orientation and preparation curriculum on file; and
   (b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:
      1. Child-placing agency program description with mission statement;
      2. Information about the rights and responsibilities of the therapeutic foster care home; and
      3. Background information about a foster child and the child’s family;
      4. An example of an actual experience of a therapeutic foster care parent that has fostered a child;
      5. Stages of grief;
      6. Behaviors linked to each stage of grief;
      7. Long-term effects on a child from separation and loss;
      8. Permanency planning for a child, including independent living services;
      9. Importance of attachment on a child’s growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;
      10. Family functioning, values, and expectations of a therapeutic foster care home;
      11. Changes that may occur in the home with placement of a child regarding:
         a. Family functioning;
         b. Family adjustment;
         c. Identity issues;
         d. Discipline issues and child behavior management, and
         e. Family desruption;
      12. Specific requirements and responsibilities of a therapeutic foster care home;
      13. Behavior management;
      14. Communication skills;
      15. Skill teaching;
      16. Cultural competency;
      17. Behavior management de-escalation techniques;
      18. The dynamics of the sexually-abused child; and
      19. The effect of chemical abuse or dependence by the child or the child’s biological parent.

2. A therapeutic foster care home shall receive a minimum of twenty-four (24) hours of annual training.

3. A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:
   (a) Provides a minimum of twenty-four (24) hours of annual training; and
   (b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child’s own family and who:
   (a) May benefit from care in a family setting, and
   (b) Has clinical or behavioral needs that exceed supports available in a foster home; or
   2. Is transitioning from group care as part of the process of returning to family and community.
(2) Unless an exception is granted pursuant to subsection (3) of this section, the number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet[,] shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.
(3)(4) Justification for an exception to subsection (2) of this section shall be:
   (a) Documented in the therapeutic foster care parent’s file; and
   (b) Authorized by the treatment director.

4. Unless an exception is granted pursuant to subsection (3) of this section, the number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet[,] shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

5. To make a request for an exception to subsection (4) of this section, the child-placing agency shall follow the procedure set forth in [The child-placing agency shall request an exception to subsection (4) of this section in accordance with] 922
KAR 1.350, Section 2(2)
(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)(2)(g), for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(b) A therapeutic foster care parent shall be responsible for:
(a) Participation in the development of an assessment, ITP, and supervision plan as specified in Section 6(7) of this administrative regulation;
(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;
(c) Adequate supervision of the child and implementation of components of the ITP, including daily log documentation as specified in the ITP;
(d) Working with the child-placing agency to promote stability and avoid disruption for the child;
(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and
(f) Providing independent living services for a child twelve (12) years of age or older consistent with a child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, the child-placing agency shall be responsible for:
(a) A placement conference, in a nonemergency placement, for the purpose of:
1. Developing permanency goals and a discharge plan for the child, including independent living services;
2. Developing a plan for the implementation of services;
3. Identifying the treatment goals; and
4. Developing a behavior management plan if applicable, and setting limits and encouraging attendance to the placement conference by:
   1. The prospective therapeutic foster care home;
   2. A respite care provider approved in accordance with Section 13(4) of this administrative regulation;
   3. The child, if appropriate; and
   4. The child's family.
(b) The social services worker shall:
(a) Have a first face-to-face visit with a child and therapeutic foster care parent or the day of the child's placement;
(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;
(c) Telephone or visit, on a weekly basis, at least once (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;
(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;
(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;
(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:
1. Required responsibilities other than the case management of a child in foster care;
2. Additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and
3. The intensity of services provided to the child and the child's family;
(g) Conduct a quarterly case consultation, including the:
1. Foster home;
2. Child's public agency worker;
3. Child-placing agency treatment director and social services worker; and
4. Child and the child's family of origin, to the extent possible;
(h) [Provide or contract for therapeutic services individualized for a child at least two (2) times each month based on the child's needs assessed in the child's ITP;
(i) Identify the support needed by the foster family, including:
1. Plan for respite care as provided in Section 13 of this administrative regulation;
2. Plan for twenty-four (24) hour on-call crisis intervention; and
3. Foster home support group;
(j) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and
(k) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(11) The child-placing agency shall:
(a) Meet requirements specified in Section 6(11) through (7) through (11) of this administrative regulation; and
(b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9. Medically-fragile Child. (1) A medically-fragile child shall be:
(a) A child in the custody of the cabinet; and
(b) Determined by the cabinet to meet the medically-fragile requirements of KAR 1.350.

(2) The decision to accept a medically-fragile child shall be optional to a child-placing agency.

(3) If a child placed with a child-placing agency in a non-medically-fragile foster home becomes medically-fragile in accordance with subsection (1) of this section, the commissioner or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically-fragile Foster Home. (1) A child-placing agency shall create a medically-fragile foster home only if the child-placing agency has:
(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically-fragile training in accordance with subsection (2)(b) and (c) of this section; and
(b) A liaison established with the cabinet.

(2) A foster home shall [may] be approved to care for a medically-fragile child by a child-placing agency if the foster home:
(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;
(b) Completes, in addition to training specified in Section 5 of this administrative regulation:
   1. Twenty-four (24) hours of cabinet training to include first aid and cardiopulmonary resuscitation (CPR) certification if the foster parent is not currently certified in first aid and CPR;
   2. Sixteen (16) hours of cabinet training if the foster parent is currently certified in first aid and CPR; or
   3. Training approved in advance by the cabinet, in the areas of:
      a. Growth and development;
      b. Nutrition; and
      c. Medical disabilities;
   (c) Maintains certification in:
      1. CPR; and
      2. First aid;
   (d) Is located within a:
      1. One (1) hour drive of a medical hospital with an emergency room; and
      2. Thirty (30) minute drive of a local medical facility; and
   (e) Is evaluated in accordance with Section 4 of this administrative regulation.

(3) Professional experience related to the care of a medically-fragile child may substitute for the training requirement of the medically-fragile foster parent as specified in subsection (2)(b) and (c) of this section:
(a) Upon the approval by a designated cabinet staff; and
(b) If the foster parent is [one (1) of the following a licensed health care professional[s][professional[s], to include:
1. Physician as defined in KRS 311.7209;
2. Registered nurse as defined in KRS 134.011(5);
3. Licensed practical nurse as defined in KRS 314.011(9);
4. Physician's assistant as defined in KRS 311.840(3); or
5. Advanced registered nurse practitioner as defined in KRS 314.011(7);
(c) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a medical-
ly-fragile child in accordance with Section 8(1) of this administrative regulation, then the cabinet shall prioritize the foster home’s enrollment in training as specified in subsection (2)(b) and (c) of this section.

(2) An approved medically-fragile foster home shall have annual reapproval, if the foster home:

(a) Completes the following amount of ongoing training as specified in subsection (2)(b) and (c) of this section:

1. Twenty-four (24) hours of the foster parent is currently certified in fire and CPR; or
2. Twenty-four (24) hours if the foster parent is not currently certified in fire and CPR.

(b) Completes the training before the anniversary date of approval as a medically-fragile foster home; and

(c) Continues to meet the requirements in Section 15 of this administrative regulation.

(2) Except for a sibling group or unless approved by designated cabinet staff, no more than four (4) children, including the medically-fragile foster parent’s own children, shall reside in a medically-fragile foster home.

(7) Unless an exception is approved by designated cabinet staff, as:

(a) One (1) parent medically-fragile foster home shall not care for more than one (1) medically-fragile child; and

(b) Two (2) parent medically-fragile foster home shall not care for more than two (2) medically-fragile children.

(3) A child-placing agency shall request an exception to subsection (6) or (7) of this section, in accordance with 922 KAR 1:350, Section 2(2).

Section 11. Placement of a Medically-Fragile Child. (1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved medically-fragile foster parent shall receive training on how to care for the specific needs of a medically-fragile child placed in the home.

(b) The training shall be conducted by a licensed health care professional.

(2) Unless an exception is granted pursuant to subsection (3)(a) of this section, a medically-fragile child shall be placed in an approved medically-fragile foster home.

(3) A child-placing agency shall:

(a) Request an exception to subsection (2) of this section in accordance with 922 KAR 1:350, Section 2(2); and

(b) Provide case management services:

1. As described in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. In accordance with the child’s needs:

a. Health plan developed by designated cabinet staff;

b. ITP; and

Supervision plan;

(c) Support the child’s health plan developed by designated cabinet staff; and

(d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home, Therapeutic Foster Care Home, or Medically-Fragile Foster Home. An approved foster parent or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Training:

(e) Recreational opportunities;

(f) Education opportunities;

(g) Nonmedical transportation;

(h) Opportunities for development consistent with the child’s religious, ethnic, and cultural heritage;

(i) Adequate supervision; and

(j) Independent living services for a child twelve (12) years of age or older;

(2) Permit a child-placing agency and staff of a state agency to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency ten (10) days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet;

(5) Notify the child-placing agency prior to:

(a) Leaving the state with a child placed by the child-placing agency for more than two (2) nights; or

(b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than three (3) days;

(6) Report immediately to the child-placing agency through which the child is placed, if there is:

(a) A life-threatening accident or illness;

(b) An absence without official leave;

(c) A suicide attempt;

(d) Criminal activity by the child requiring notification of law enforcement;

(e) Death; or

(f) A child’s possession of a deadly weapon;

(7) Report, if applicable, within two (2) business days to the child-placing agency if there is:

(a) Change in address;

(b) Change in the number of people living in the home;

(c) Significant change in circumstances in the foster home; or

(d) Failure of the foster child or foster parent to comply with the supervision plan;

(8) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child’s birth family regarding:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(9) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;

(10) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194A.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child’s birth family;

(11) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;

(12) Participate in a case planning conference concerning a child placed by the child-placing agency;

(13) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(14) Ensure that a child in the custody of the cabinet receives the child’s designated per diem allowance;

(15) Provide medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b) Annual physicals and examinations for the child;

(16) Treat a child placed by the child-placing agency with dignity;

(17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(18) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency that has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically-Fragile Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(3) of this administrative regulation.

(4) The child-placing agency shall not approve a respite care
provider, unless the provider meets requirements specified by Section 4(5)(e), (g), and (n) through (v) of this administrative regulation.

(5) A respite care provider shall:
(a) Receive, from the agency or foster parent, preparation for placement of a child, including:
   1. Information in accordance with KRS 605.090(1)(b); and
   2. Information regarding the supervision plan of the child;
(b) Provide adequate supervision in accordance with the child’s supervision plan; and
(c) (1) Give relief to a foster parent caring for a child; or
   (2) Provide for an adjustment period for a child.
(6) A respite care provider for a medically-fragile child shall meet the requirements of:
(a) Meet the requirements of Section 10(2)(b) through (d) or (e)(1) of this administrative regulation; and
(b) Receive training on how to meet the specific needs of the medically-fragile foster child from:
   1. A licensed health care professional; or
   2. The foster parent trained by a licensed health care professional (Section 14(1) of this administrative regulation).

Section 14. Private Placement Process. Except for a child in the custody of, or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, the following shall be the responsibility of the child-placing agency:

(a) The child-placing agency shall:
   (i) Complete an intake assessment of the strengths and needs of the child and the child’s family of origin; and
   (ii) Ascertain the appropriateness of the referral for the child.
(b) The child-placing agency shall:
   (1) For a child being placed with a child-placing agency, the child-placing agency shall obtain:
      (a) Agreement for voluntary care signed by the custodian; or
      (b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.
   (2) The child-placing agency shall:
      (a) Complete an intake assessment of the strengths and needs of the child and the child’s family of origin; and
      (b) Ascertain the appropriateness of the referral for the child.
(2) The child-placing agency shall:
(a) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child’s family based on an individualized assessment of the child’s and family’s needs within thirty (30) days of the child’s placement with the child-placing agency.
(b) The assessment shall be revised as needed.
(c) The assessment and ITP shall include the type and extent of services to be provided to the child and the child’s family.
(d) Unless in the best interest of the child, the child, parent, and foster parent shall be included in the assessment and ITP.
(e) The foster home selected for placement shall be the most appropriate home based on the child’s needs and the strengths of the foster family.
(f) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.
(g) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.
(h) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.
(i) The child-placing agency shall:
   (a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;
   (b) Assess and document the parent’s capacity for reunification quarterly;
   (c) Provide for review of the child in order to evaluate the progress toward achieving the child’s permanency goal every six (6) months; and
   (d) Ensure that foster care continues to be the best placement for the child.
(j) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.
(k) A reasonable effort shall be made to return the child to the family of origin.
(l) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:
   (a) Family of origin;
   (b) Treatment director;
   (c) Social services worker; and
   (d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:
   1. Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and
   2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.
(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.
(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.
(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.
(b) The family shall participate in planning for the child’s return.
(c) If regular contact with the child’s family does not occur, a plan for the child’s return shall include at least one (1):
   1. Prior visit between the child and the family; and
   2. Preliminary visit of the child to the child’s family home.
(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child’s family.

Section 15. Annual Reevaluation of an Approved Adoptive Home. An Approved Foster Home and/or a child-placing agency shall:

(1) Conduct a personal interview in the home with an approved:
   (a) Adoptive home awaiting placement; or
   (b) Foster home; and
   (2) Assess:
      (a) Any change in the home;
      (b) The ability of the home to meet the needs of a child placed in the home; and
      (c) The home’s continued compliance with the requirements of this administrative regulation in:
         1. Section 4(3)(b), (g), and (l) through (v), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;
         2. Sections 6(6)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;
         3. Sections 5(6)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and
         4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.
(3) After initial approval, a foster parent, an adoptive parent awaiting placement, a respite care provider, or a member of a foster or adoptive parent’s household shall comply with a child-placing agency’s request for a statement regarding the parent, provider, or household member’s general health and medical ability to care for a child.
(4) If a prospective adoptive home is awaiting an international adoption, the child-placing agency shall conduct a reevaluation of the home once every eighteen (18) months.

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:
   (a) To a child:
      1. In the custody of a state agency; and
      2. Who is twelve (12) to twenty-one (21) years of age; and
   (b) Directly or indirectly through a foster parent with whom the child is placed;
   (c) As prescribed in the child’s ITP; and
   (d) In accordance with 42 U.S.C. 677(a), and
   (2) Teach Independent living:
      (a) To a child:
      1. In the custody of a state agency; and

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2. Sixteen (16) years of age and older; and
(b) Developed in accordance with Section 17(1)(e) of this administrative regulation.

Section 17. Independent Living Programs. (1) A child-placing agency providing independent living programming shall:
(a) Conduct and document an assessment of the child's skills and knowledge:
1. Within fourteen (14) days of a child's placement with the child-placing agency and provision of services by the agency's independent living program; and
2. Using a tool to assess:
(a) Money management and consumer awareness;
(b) Job search skills;
(c) Job retention skills;
(d) Use of and access to:
(i) Community resources;
(ii) Housing; and
(iii) Transportation;
(e) Educational planning;
(f) Emergency and safety skills;
(g) Legal knowledge;
(h) Interpersonal skills, including communication skills;
(i) Health care knowledge, including knowledge of nutrition;
(j) Human development knowledge, including sexuality;
(k) Management of food, including food preparation;
(l) Ability to maintain personal appearance;
(m) Housekeeping; and
(n) Leisure activities;
(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement with a child-placing agency in an independent living program, to include:
1. Educational, job training, housing, and independent living goals;
2. Objectives to accomplish a goal;
3. Methods of service delivery necessary to achieve a goal and an objective;
4. Person responsible for each activity;
5. Specific timeframes to achieve a goal and an objective;
6. Identification of a discharge plan;
7. Plan for aftercare services; and
8. Plan for services from a cooperating agency;
(c) Maintain written policies and procedures for the independent living program;
(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment or:
1. Content of the independent living curriculum;
2. Use of the independent living materials;
3. Application of the assessment tool; and
4. Documentation methods used by the child-placing agency;
and
(e) Maintain and teach independent living in accordance with 42 U.S.C. 677(a), including:
1. Money management and consumer awareness;
2. Job search skills;
3. Job retention skills;
4. Educational planning;
5. Community resources;
6. Housing;
7. Transportation;
8. Emergency and safety skills;
9. Legal skills;
10. Interpersonal skills, including communication skills;
11. Health care, including nutrition;
12. Human development, including sexuality;
13. Food management, including food preparation;
14. Maintaining personal appearance;
15. Housekeeping;
16. Leisure activities;
17. Voting rights and registration;
18. Registration for selective service, if applicable;
19. Self-esteem;
20. Anger and stress management;
21. Problem-solving skills; and
22. Decision-making and planning skills.
(2) A social services worker from an independent living program shall:
(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program and provide supervision in accordance with the child's supervision plan; and
(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age; and
(c) Have:
1. Daily face-to-face contact with a child:
   a. Sixteen (16) to eighteen (18) years of age; and
   b. In the independent living program; or
2. A minimum of one (1) face-to-face, in-home contact per week for a child:
   a. Eighteen (18) to twenty-one (21) years of age; and
   b. In the independent living program;
(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:
1. Safety;
2. Use of alcohol; and
3. Illegal contraband;
(e) Maintain a caseload of no more than ten (10) children, including independent living program:
1. Participants sixteen (16) to twenty-one (21) years of age; and
2. Participants' children assigned a Level of Care of III or higher;
(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.
(3) (a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.
(b) Nonresidents shall be asked to vacate the living unit.
(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:
(a) Does not present a hazard to the health and safety of the child;
(b) Is well ventilated and heated; and
(c) Complies with state and local health requirements regarding water and sanitation.
(5) The child-placing agency shall maintain documentation for each child concerning:
(a) Assistance to the child in finding and keeping in touch with family, if possible;
(b) Health care and therapeutic services received by a child;
(c) Progress each child has made in the independent living program, including independent living services received;
(d) Progress in an educational program, including vocational education;
(e) An assessment of the child's readiness to live independently; and
(f) The social services worker's contacts with the child, including observation of the child's living arrangement.

Section 18. Maintenance of a Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care Record. (1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically-fragile foster homes and therapeutic foster care homes.
(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.
(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.840, and 45 C.F.R. Parts 160 and 164.
(2) The record of the child, including information of the child's family, shall include:
(a) Identifying information for child, parent, and foster home;
(b) Commitment order or custodian's consent for admission;
(c) Birth and Immunization certificate;
(d) Educational record;
(e) Medical and dental record since placement;
3. Discipline; and
(k) Financial assistance available to an adoptive home; and
(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 20. Adoption Placement Process. (1) A child shall not be placed for adoption until the:
(a) Adoptive home has been approved;
(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and
(c) Child is placed with the child-placing agency for the purpose of adoption placement.
(2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.
(3)(a) The authority granted to a child-placing agency licensed by the cabinet shall not use the authority authorizing the agency to place a child for adoption [shall not be used] to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.
(b) The child-placing agency shall comply with provisions of 922 KAR 1:010.
(4) The following shall be obtained by the child-placing agency:
(a) A developmental history of the adoptive child to include:
1. Birth and health history, unless an exception is granted pursuant to subsection (5) of this section;
2. Early development, unless an exception is granted pursuant to subsection (5) of this section;
3. Characteristic ways the child responds to people and situations;
4. Any deviation from the range of normal development;
5. The experiences of the child prior to the decision to place the child for adoption;
6. Maternal attitude during pregnancy and early infancy;
7. Continuity of parental care and affection;
8. Out-of-home placement history;
9. Separation experiences; and
10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:
   a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and
   b. Including an illness of the biological mother or father;
(b) A social history of the biological or legal parent, to include:
1. Name;
2. Age;
3. Nationality;
4. Education;
5. Religion or faith; and
6. Occupation;
(c) Information obtained from direct study and observation of the child by:
1. Social services worker; and
2. Physician or other licensed health care professional;
(d) If indicated, information obtained from direct study and observation of the child by:
1. Foster parent;
2. Nurse;
3. Psychologist; or
4. Other consultants; and
(e) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:
1. Determining the father's parental rights; and
2. Establishment of possible hereditary endowments.
(5) Exception to subsection (4)(a)1 and 2 of this section may be granted, if the adoption involves a child born in a country other than the United States.
(6) If either biological or legal parent is unavailable, unwilling,
or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

7. Prior to finalization of the adoptive placement, a licensed physician or other licensed health professional shall make a medical examination [shall be made by a licensed physician or other licensed health professional] to determine:
   (a) The state of the child's health;
   (b) Any significant factor that may interfere with normal development; and
   (c) The implications of any medical problem.

8. The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:
   (a) The adoptive home shall agree to:
      1. Comply with KRS 199.470;
      2. File an adoptive petition at a time agreeable to the adoptive home and the child-placing agency; and
      3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:
         a. After placement; and
         b. Prior to final judgment of adoption by the circuit court;
   (b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:
      1. Background;
      2. Medical history;
      3. Current behavior; and
      4. Medical information necessary to comply with KRS 199.520(4)(a); and
   (c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

9. (a) Preplacement visits shall be arranged for the adoptive home and a child.
   (b) The pattern and number of visits shall be based on the child's:
      1. Age;
      2. Development; and

10. During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

11. (a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.
   (b) If siblings have been separated in placements:
      1. The case record shall reflect a valid basis for the separation;
      2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and
      3. Continued contact between siblings shall be maintained, if possible.

12. A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 21. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility involves the following:
   (a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;
   (b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and
   (c) Awareness of a change in the adoptive home including health, education, or behavior.

2. Upon request of the cabinet, the child-placing agency shall:
   (a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;
   (b) Prepare and provide the original confidential report to the court; and
   (c) Forward to the cabinet a copy of:
      1. The confidential report that was provided to the court; and
      2. Information required by KRS 199.520 and 199.572.

3. If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 22. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:
   (a) A child accepted for care, and the child's family; and
   (b) An adoptive applicant.

2. The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:
   (a) Information and documents needed by the court;
   (b) Information about the child and the child's family;
   (c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and
   (d) Information gathered during the intake process including the following:
      1. A description of the situation that necessitated placement of the child away from the child's family, or termination of parental rights;
      2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;
      3. Verification of the child's birth record and the registration number;
      4. A copy of the child's medical record up to the time of placement;
      5. A copy of the required evaluation of the adoptive placement;
      6. Date of adoptive placement;
      7. A statement of the basis for the selection of this adoptive home for the child;
      8. A record of after-placement services with dates of:
         a. Visits;
         b. Contacts;
         c. Observations;
         d. Filing of petition;
         e. Granting of judgments; and
         f. Other significant court proceedings relative to the adoption;
      9. Child's adoptive name; and
      10. Verification of preparation and orientation and annual training in accordance with Section 19 of this administrative regulation.

3. If there is a need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

4. Records on adoption that contain pertinent information shall be:
   (a) Maintained indefinitely following final placement of a child; and
   (b) Sealed and secured from unauthorized scrutiny.

5. A child-placing agency shall submit adoptive case records to the cabinet, if:
   (a) The child-placing agency closes; and
   (b) No other operational governing entity exists.

Section 23. Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:
   (a) Sexual abuse or exploitation by a resident of the household is substantiated;
   (b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;
   (c) A serious physical or mental illness develops that may impair or preclude adequate care of the child in the home; or
   (d) The home fails to meet requirements of this administrative regulation.
1. Section 4(3)(h), (i), and (j) through (v), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(3)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), and 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) A foster or adoptive home may be closed:

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

(3) The child-placing agency shall provide the foster or adoptive parent a written closure statement to include:

(a) Date of approval and termination; and

(b) Indication of whether the closure was at the request of the foster parents or the agency.

Section 24. Foster Care Registry. (1) A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically-fragile foster homes and therapeutic foster care homes.

(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parent's:

1. Full name;

2. Social Security number; and

3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and

2. Mailing address;

(c) The date the foster home was approved; and

(d) Whether the foster home is active or inactive.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: June 6, 2008
FILED WITH LRC: June 12, 2008 at 1 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amended After Comments)


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.010(7) for 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) "Firm" means property:
(a) Located outside the corporate limits of a municipality on at
least ten (10) acres.
(b) Used for purposes set forth in the definitions of "agricultural
land" and "horticultural land", established in KRS 132 010(9) and
(10), respectively; and
(c) Qualified by and registered with the property valuation ad-
ministrator 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 de-
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 Resi-
dential 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
855(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
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 con-
structed 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.

46) "Two (2) family dwelling" means a building containing
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 regu-
lation and the 2007 Kentucky Building Code, the International
Building Code 2006, shall be the mandatory state building code for Ken-
tucky 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.

(i) Fast track elective.
(a) A request for expedited site and foundation approval of one
week or less, prior to full review of the complete set of construc-
tion 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.

(ii) 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.

(iii) Table 121.3.1, Basic Office Fee Schedule. The basic plan
review or inspection fee shall be as set forth in Section 121. Ta-
ble 121.3.1 of the 2007 Kentucky Building Code which is in-
corporated by reference:

(r) 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) Industrial fast food, six and one-half (6.5) cents;
(f) Institutional occupancies, eight and one-half (8.5) cents;
(g) Institutional occupancies, seven and one-half (7.5) cents;
(h) Institutional occupancies, seven and one-half (7.5) cents;
(i) Institutional occupancies, seven and one-half (7.5) cents;
(j) Institutional occupancies, seven and one-half (7.5) cents;
(k) Institutional occupancies, seven and one-half (7.5) cents;
(l) Institutional occupancies, seven and one-half (7.5) cents;
(m) Institutional occupancies, seven and one-half (7.5) cents;
(n) Institutional occupancies, seven and one-half (7.5) cents;
(o) Institutional occupancies, seven and one-half (7.5) cents.

(iii) 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 di-
mensisons of the addition.

(b) The minimum fee for review of plans under this subsection
shall be $200.

(i) Change in use.
The office shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the total square footage of the entire building or structure under the new occupancy type as determined by the outside di-
mensions of the addition.

(b) The minimum fee for review of plans under this subsection
shall be $200.

(iii) 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. (a) Except as provided in paragraph (b) of this subsection
and as superseded by the provisions of this administrative regu-
lation and the 2007 Kentucky Building Code, the International
Building Code 2006, shall be the mandatory state building code for Ken-
tucky for all buildings.

(b) One (1) and two (2) family dwellings and townhouses shall
be governed by 815 KAR 7:125.
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) Automatic Sprinkler Review Fee Schedule shall be as set forth in Section 121.3.9 of the 2007 Kentucky Building Code which is incorporated by reference.
(b) Fire alarm system review fee shall be as set forth in Section 121.3.10 of the 2007 Kentucky Building Code which is incorporated by reference.

(c) The standpipe plan review fee shall be as set forth in Section 121.3.11 of the 2007 Kentucky Building Code which is incorporated by reference.
(d) Carbon dioxide suppression system review fee shall be as set forth in Section 121.3.12 of the 2007 Kentucky Building Code which is incorporated by reference.
(e) Clean agent suppression system review fee shall be as set forth in Section 121.3.13 of the 2007 Kentucky Building Code which is incorporated by reference.
(f) Foam suppression system review fee shall be as set forth in Section 121.3.14 of the 2007 Kentucky Building Code which is incorporated by reference.
(g) The commercial range hood review fee shall be as set forth in Section 121.3.15 of the 2007 Kentucky Building Code which is incorporated by reference.
(h) Dry chemical systems review fee (except range hoods) shall be as set forth in Section 121.3.16 of the 2007 Kentucky Building Code which is incorporated by reference.

(i) [Table 121.3.9, Automatic Sprinkler Review Fee Schedule
1. An inspection of four (4) through 200 sprinklers shall be a fee of $180;
2. An inspection of 201 through 400 sprinklers shall be a fee of $175;
3. An inspection of 401 through 600 sprinklers shall be a fee of $170; and
4. An inspection of 601 through 750 sprinklers shall be a fee of $160.
5. Plus $200 per sprinkler up to 750 sprinklers.
6. Plus $200 per 200 sprinklers beyond 750 sprinklers.

(b) Fire alarm system review fee:
1. Zero to 20,000 square feet shall be $150, and
2. Over 20,000 square feet shall be $160 plus $20 per additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be $160. The combination stand-pipe and near-plane 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 $2 per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:
1. One (1) through 35 (35) pounds of agent shall be $150, and
2. Over thirty-five (35) pounds shall be $160 plus $2 per pound in excess of thirty-five (35) pounds.
3. The fee for gaseous systems shall be $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 subparagraph 1 of this paragraph shall not be less than $160 or more than $1,600.

(g) The commercial range hood review fee shall be $150 per hood.
(h) Dry chemical systems review fee (except range hood):
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 for 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:
(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.

RICHARD MOLONEY, Commissioner
LARRY BOND, Deputy Secretary
RICHARD BOND, Deputy Secretary
FOR ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Dawn M. Bellis, 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: Dawn M. Bellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Building Code as 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 1985.050.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: 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: Amend Rule 1, Section 101.3 to clarify that the Kentucky Building Code is a uniform, mandatory, mini-maxi code and prohibits local building departments from enforcing less than those or requiring more than the code requires; Chapter 1, Section 108.2 to bring KBC language in unison with Kentucky Residential Code Section R108.2.1 to facilitate the uniform enforcement of obtaining a permit before construction begins; Chapter 1, Section
104.1.2, 104.2.2 to provide clear direction regarding jurisdiction and applicable code requirements; Chapter 3, Section 304.1 to provide clear direction regarding jurisdiction and applicable code requirements; Chapter 3, Section 310.2 to correct previous amendments that inadvertently require automatic sprinklers in Bed and Breakfast Inns; Chapter 9, Section 303.7.2 adds Bed and Breakfast homes in the exceptions under this section; Chapter 10, Sections 1007.3, Section 1007.4 and 1007.5 to restore the sprinkler options that were in the 2002 KBC. The sprinkler systems are consistent with the requirements of the ADAGG; Chapter 16, Section 1601.2 to the "Certificate of Compliance" statement allows the building official to accept the design professional's structural design when the design professional places his/her seal and signature on the construction documents unless the building official notifies the designer of a specific code violation; Chapter 23, Section 2308.10.4.1, to be in compliance with the Kentucky Residential Code requirements for ceiling joist and rafter connections for wood frame structures; Chapter 35, Referenced Standard to reference ASHRAE 62.1, 2007, Ventilation for Acceptable Indoor Air Quality; Chapter 35, Referenced Standards to include Section 304.1 in the referenced code section; and Chapter 35, Referenced Standards to update the National Electric Code (NEC) NFPA 70 to the 2008 edition.

(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.

(c) How the amendment conforms to the content of the authorizing statutes: 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).

(d) 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 the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to 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.

(5) 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 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 this 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 the regulations 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 additional cost to administer this program for subsequent years.

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

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

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

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office of Housing, Buildings And Construction
Division of Building Code Enforcement


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.050, 198B.080, 198B.110, 198B.250, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one- and two-family

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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 having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

(5) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(6) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(7) "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.

(8) "Office" is defined by KRS 198B.010(11).

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one-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 is not connected to any other unit or building.

(11) "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. They are not more than two-family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two-family dwelling, or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2006, as amended by this administrative regulation and the 2007 Kentucky Residential Code.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, twofamily, or townhouses shall comply with the 2006 International Building Code and the 2007 Kentucky Building Code (Residential Code as amended by this administrative regulation and the 2007 Kentucky Residential Code [Kentucky Building Code, 2006] as established in 815 KAR 7:120).

(3) The International Residential Code shall be amended as established in the 2007 Kentucky Residential Code.

(4) Plans for single-family or one-family dwellings, two-family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

Section 3. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "International Residential Code 2006", International Code Council, Inc.; and

(b) "2007 Kentucky Residential Code", May 14, 2008 [May 46, 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.

RICHARD MOLONEY, Commissioner
LARRY BOND, Deputy Secretary
LARRY BOND, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Dawn M. Bellis, 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: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the building construction requirements for one and two family dwellings and townhouses.

(b) The necessity of this administrative regulation: This administrative regulation establishes the Kentucky Residential Code as part of the Uniform State Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is the portion of the uniform mandatory statewide building code for single family dwellings as authorized by KRS Chapter 198B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains all the enforcement requirements and technical standards for small residential construction.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates updates to the 2007 Kentucky Residential Code and includes language to make clear that the Kentucky Residential Code is a minimum code, more clearly states the requirements related to gates and barriers surrounding outdoor swimming pools, updates the national Electric Code to the 2008 edition, and provides requirements regarding fire resistance and fire separation distances for roof assemblies.

(b) The necessity of the amendment to this regulation: The amendment is necessary to clarify existing language and establish these additional safety standards in the Kentucky Residential Code.

(c) How the amendment conforms to the content of the authorizing statute: KRS 198B.050 requires the adoption of a uniform state building code and its continuing review and modification.

(d) How the amendment will assist in the effective administration of the statutes: Will provide amendments to the 2007 Kentucky Residential Code which have been approved by the Kentucky Board of Housing, Buildings and Construction on November 29, 2007 and February 21, 2008.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Home builders and purchasers as well as local governments, but only in the event that they elect to have a building inspection program for single family dwellings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The referenced entities will have to modify their respective building activities to conform to the new code requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Construction methods used to comply with fire resistance and separation requirements will determine whether there are increased costs. The new code simply incorporates up-to-date building standards. Increased construction costs, if there are any, should be modest.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by employing updated construction practices and result in safer housing.
need to conform. Building inspectors will be impacted only by having updated code requirements to enforce.

(6) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional implementation costs are expected.
(b) On a continuing basis: No additional implementation costs are expected.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Building permit fees are used to implement and enforce the code.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increases in fees are provided by this amendment.

(10) TIERING: Is tiering applied? Tiering is not applied. Tiering is applied throughout the code only to the extent that different construction requirements apply to varying types of structures and construction methods.

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 of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local governments that have a residential inspection program will be impacted.
3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.080 and 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 Residential Code is currently being enforced, and this regulatory amendment establishes no new costs or fees.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no effect on revenue for the first year.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no effect on revenue for subsequent years.
   (c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.
   (d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for subsequent years.

   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospitals and Provider Operations
(Amended After Comments)

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.

RELATED TO: KRS 205.520, 42 C.F.R. 424.57, 440 230, 441 Subpart B, 45 C.F.R. 162.102, 42 U.S.C. 1396d(n)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health 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 provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) "Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assembly of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:
   (a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;
   (b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;
   (c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or
   (d) Up to two (2) days prior to discharge from a hospital or nursing facility if:
      1. The item was provided for purposes of fitting or training of the patient;
      2. The item is ready for use in the recipient's home; and
      3. No billing is done prior to the date of the recipient's discharge from the facility.

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

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(8) "Durable medical equipment" or "DME" means medical equipment which:
   (a) Withstands repeated use;
   (b) Is primarily and customarily used to serve a medical purpose;
   (c) Is generally not useful to a person in the absence of an illness or injury; and
   (d) Is appropriate for use in the home.

(9) "Family choices" means a benefit plan for an individual who:
   (a) Is covered pursuant to:
      1. 42 U.S.C. 1396a(a)(10)(A)(i) and 1396a - 1;
      2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);
      3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(1)(1)(B);
      4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(1)(1)(C);
      5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(1)(1)(D); or
      6. 42 C.F.R. 457.310; and
   (b) Has a designated package code of 2, 3, 4, or 5.

(10) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.
(11) "Home" means a place where the recipient resides excluding:
(a) A nursing facility;
(b) A hospital;
(c) An Intermediate care facility for individuals with mental retardation or a developmental disability; or
(d) An institution for individuals with a mental disease as defined in 42 U.S.C. 1396d(1).

(12) "Incidental" means that a medical procedure or service:
(a) Is performed at the same time as a more complex primary procedure or service; and
(b) Requires little additional resources or time.

(13) "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(14) "Medicaid DME Program Fee Schedule" means a list, located at http://chfs.ky.gov/dms, containing the current Medicaid maximum allowable amount established by the department for covered items of durable medical equipment, a prosthetic, an orthotic, or a medical supply.

(15) "Medical supply" means an item that is:
(a) Consumable;
(b) Nonreusable;
(c) Disposable; and
(d) Primarily and customarily used to serve a medical purpose.

(16) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130 [Medical necessity and clinically-appropriate determination basis].

(17) "Mutually exclusive" means that two (2) DMEPOS items:
(a) Are not reasonably provided in conjunction with one another during the same patient encounter on the same date of service;
(b) Repurpose, duplicate or vary similar items; or
(c) Represent medically inappropriate use of HCPCS codes.

(18) "Nutritional supplement" means a liquid or powdered administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20) "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner or physician's assistant who:
(a) Is acting within the legal scope of practice under the licensing laws of the state in which the health care provider's medical practice is located;
(b) If an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:
1. 907 KAR 1:671 [Conditions of Medicaid provider participation: withholding overpayments, administrative appeal process and procedures]; and
2. 907 KAR 1:672 [Provider enrollment, enrollment, and documentation for Medicaid participation];
(c) Is in good standing with the appropriate licensure board and CMS; and
(d) Has the legal authority to write an order for a medically-necessary item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

(21) "Prior authorization" means approval which a supplier shall obtain from the department before being reimbursed.

(22) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(23) "Reasonableness" means:
(a) The expense of the item does not exceed the therapeutic benefits which could ordinarily be derived from use of the item;
(b) The item is not substantially more costly than a medically-appropriate alternative; and
(c) The item does not serve the same purpose as an item already available to the recipient.

(24) "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(25) "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)(a) Except as provided in subsection (2)(b) of this section, coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:
1. Be based on medical necessity and reasonableness;
2. Be clinically appropriate pursuant to the criteria established in 907 KAR 3.130 [Medical necessity and clinically-appropriate determination basis];
3. Require prior authorization in accordance with Section 7 of this administrative regulation;
4. Be provided in compliance with 42 C.F.R. 440.230(c); and
5. Be restricted to an item used primarily in the home.

(b) Coverage of prosthetic devices shall not exceed $1,500 per twelve (12) month period per member of the family choices benefit plan.

(2) Unless otherwise established in this administrative regulation:
(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1)(a) of this section that was in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1)(a) of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period or time mandated by 45 C.F.R. 104.916 [period of five (5)-year).

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payer for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:
(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;
(b) A MAP-1000, Certificate of Medical Necessity; or
(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Food.

(7) A CMN shall contain:
(a) The recipient's name and address;
(b) A complete description of the item or service ordered;
(c) The recipient's diagnosis;
(d) The expected start date of the order;
(e) The length of the recipient's need for the item;
(f) The medical necessity for the item;
(g) The prescriber's name, address, telephone number and Unique Provider Identification Number (UPIN), if applicable; and
(h) The prescriber's signature and date of signature.

(8) Except as specifically provided otherwise in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specifically provided otherwise in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty
(60) days prior to the order. (12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) The following items shall be covered for purchase only:

(a) A cane;
(b) Crutches;
(c) A standard walker;
(d) A prone or supine stander;
(e) A vest airway clearance system, excluding the generator;
(f) A noninvasive elastic oxygenation stimulator; or
(g) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.

(2) The following items shall be covered for rental only:

(a) An apnea monitor;
(b) Respiratory assist device having bilevel pressure capability with backup rate feature;
(c) A generator for use with a vest airway clearance system;
(d) A ventilator;
(e) A negative pressure wound therapy electric pump;
(f) An electric breast pump;

(g) The following oxygen systems:
1. Oxygen concentrator;
2. Stationary compressed gas oxygen;
3. Portable gaseous oxygen;
4. Portable liquid oxygen;
5. Stationary liquid oxygen;

(h) Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) or (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(4)(a) A MAP-1001 form shall be completed if a recipient requests an item or service not covered by the department.
(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:
1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;
2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;
3. The DME supplier shall complete the supplier information on the MAP 1001;
4. The DME supplier shall provide a copy of the completed MAP 1001 to the recipient; and
5. The DME supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 102.316 (five (5) years).

(d) If an item or service was denied by the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a

speech-language pathologist; and
(b) The item is prior authorized by the department.

(2) A customized DME item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or
(b) A wheelchair for a recipient who, due to a [see-er] medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;
(b) A deformity due to injury; or
(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral supplemental supplement shall be covered if:
(a) The item is prescribed by a licensed prescriber;
(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients.

(c) The item is prior authorized, and
(d) Nutritional Intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:
(a) If prescribed by a physician for the treatment of an Inherited metabolic condition specified in KRS 205.560;
(b) If not covered through the Medicaid outpatient pharmacy program;
(c) Regardless of whether it is the sole source of nutrition; and
(d) If the item is prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:
(a) Medical separation of mother and infant;
(b) Inability of an infant to nurse normally due to a significant feeding problem; or
(c) An illness or injury that interferes with effective breast feeding.

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:
(a) During a period of medical need;
(b) If necessary to make the item serviceable;
(c) If no warranty is in effect on the requested repair; and
(d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.

(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:
(a) Loss of the item;
(b) Irreparable damage or wear; or
(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items
shall be excluded from Medicaid coverage through the DME Program:
(a) An item covered for Medicaid payment through another Medicaid program;
(b) Equipment that is not primarily and customarily used for a medical purpose;
(c) Physical fitness equipment;
(d) Equipment used primarily for the convenience of the recipient or caregiver;
(e) A home modification;
(f) Routine maintenance of DME that includes:
   1. Testing;
   2. Cleaning;
   3. Regulating; and
   4. Assessing the recipient’s equipment;
(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; or
(h) An item determined not medically necessary, clinically appropriate or reasonable by the department.
(2) An estimated repair shall not be covered if the repair cost equals or exceeds:
(a) The purchase price of a replacement item; or
(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.
(3) Durable medical equipment, prostheses, orthotics and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:
(a) An item or repair billed to the department at $300 or more;
(b) Rental of equipment excluding oxygen services after twelve continuous months of service;
(c) A therapeutic shoe or boot;
(d) Orthopedic shoes;
(e) An adjustment to a prosthetic or orthotic;
(f) An augmentative communication device;
(g) A customized DME item;
(h) A replacement DME item, prosthetic, or orthotic;
(i) A nutritional supplement;
(j) An amino acid modified preparation or a low-protein modified food product;
(k) A loaner item for a member-owned piece of equipment that is being repaired;
(l) A DMEPOS item denoted by a general or nonspecific HCPCS code;
(m) An item designated on the Medicaid DME Program Fee Schedule as requiring prior authorization;
(n) An item which exceeds the quantity limitation set in the Medicaid DME Program Fee Schedule;
(o) An item designated by a HCPCS code not indicated on the Medicaid DME Program Fee Schedule that is determined by the department to be a covered benefit.
(2) If an item requires prior authorization, a supplier shall comply with the following:
(a) Submit all required documentation prior to or within one (1) year from the date of service, and [ae]
(b) Submit a written request within seven (7) business days to the department for prior authorization which shall include the prescriber’s order; and
2. Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization.
3. If the request for prior authorization is pending, the department shall acknowledge from the department that the prior authorization request is being processed, submit to the department a completed CMN and prior authorization form within thirty (30) business days.
(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

4. The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.
5. If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.
(7) A supplier shall request prior authorization by mailing or faxing the following information to the department:
(a) A completed prior authorization form MAP-9;
(b) A completed CMN; and
(c) If requested by the department, additional information required to establish medical necessity clinical appropriateness, or reasonableness.
(8) The following additional information shall be required for prior authorization of a customized item:
(a) An estimate of the fitting time;
(b) An estimate of the fabrication time;
(c) A description of the materials used in customizing the item; and
(d) An itemized estimate of the cost of the item, including the cost of labor.
(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:
(a) A description of the nature of the repair;
(b) An itemization of the parts required for the repair;
(c) An itemization of the labor time involved in the repair; and
(d) A copy of the manufacturer’s warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.
(10) An item shall be prior authorized based on:
(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and
(b) Clinical appropriateness pursuant to the criteria established in 507 KAR 3:130(4)-Medically necessary and clinically appropriate determination basis).
2. Medicare criteria if the criteria referenced in paragraph (b)1. of this subsection does not exist or is unavailable.
(11) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity and:
(a) Clinical appropriateness pursuant to the criteria established in 507 KAR 3:130(4)-Medically necessary and clinically appropriate determination basis);
(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.
(12)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.
(b) Eligibility verification shall be the responsibility of the supplier.
(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.
(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients,”

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, new item that is purchased shall be reimbursed at the lesser of:
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(a) The supplier's usual and customary charge for the item;
(b) The purchase price specified in the Medicaid DME Program Fee Schedule; or
(c) If indicated in the Medicaid DME Program Fee Schedule as manually priced:
   1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;
   2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1161, E1220, E1229, E1231 through E1238, or K0009 [or K0009], or
   3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0055 through E0057, E0060, E1002 through E1010, E1015, E1028 through E1030, E2201 through E2204, E2300, E2301, E2310, E2311, E2321[E2320] through E2330, E2340 through E2343, E2373 through E2376, E2381 through E2386, E2395, E2601 through E2621, K0108, [K0669 through K0669, K0734 through K0737, or L8499.

   (2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

   (a) An item denoted by a HCPCS code not currently on the Medicaid DME Program Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.

   (b) The department shall post HCPCS code change information on its website as accessible at https://kydhc.gov/dms. The information may also be obtained by writing the Department for Medical Services at 275 East Main Street, Frankfort, Kentucky 40621.

   (3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1.604([Repealed—cost-sharing].

   (4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1.606([Coverage of and payment for services for persons eligible for benefits under both Title XIX and Title XIX].

   (5) Reimbursement for the purchase of an item that is currently being rented shall be:

   (a) For an item that has been rented for less than three (3) months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; or

   (b) For an item that has been rented for three (3) months or more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

   (6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charges for the item:

   (a) The rental price specified in the Medicaid DME Program Fee Schedule; or

   (b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

      1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

      2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

   (7) Except for an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of twelve (12) consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

   (8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lesser of:

   (a) The supplier's usual and customary charge; or

   (b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

   (9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

   (10) The rental price of an item shall include rental of the item and the cost of:

        (a) Shipping and handling;

        (b) Delivery and pickup;

        (c) Setup;

        (d) Routine maintenance; and

        (e) Essential medical supplies required for proper use of the equipment.

   (11) The purchase price of a prosthesis or orthotic shall include:

        (a) Acquisition cost and applicable design and construction;

        (b) Required visits with a prosthetist or orthotist prior to receipt of the item;

        (c) Proper fitting and adjustment of the item for a period of one (1) year;

        (d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

        (e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number and adhere to all CMS provider standards in accordance with 42 C.F.R. 424.47;

(2) Be enrolled in the Kentucky Medicaid Program in accordance with:

(a) 907 KAR 1.671([Conditions of Medicaid provider participation: withholding of payments, administrative appeal process, and sanctions]); and

(b) 907 KAR 1.672([Provider enrollment, disclosure, and documentation for Medicaid participation]).

(3) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164;

(4) Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider informed the recipient of noncoverage prior to providing the service.

Section 10. 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 1.653([Medicaid-covered services—hearing and appeal]).

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1.650([Medicaid hearings and appeals regarding Medicaid eligibility]).

(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([Conditions of Medicaid provider participation: withholding of payments, administrative appeal process, and sanctions]).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form MAP-0, Prior Authorization Form", February 2005 edition, Department for Medicaid Services;

(b) "Form MAP-1000, Certificate of Medical Necessity", February 2005 edition, Department for Medicaid Services;

(c) "Form MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods/Weight", February 2005 edition, Department for Medicaid Services;

(d) "Medicaid DME Program Fee Schedule", January 2008/October 2006 edition; and

(e) "Form MAP 1001, Advance Member Notice", September 2006 edition.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 12, 2008
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

FILED WITH LRC: July 14, 2008 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: Charles Douglass

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(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 coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(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 coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(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 requires rental of an airway clearance vest system for a 3 month trial period before purchase of the equipment; no longer restricts generator for an airway system coverage to rental only; requires that a supplier submit a completed "Certificate of Medical Need (CMN)" form to the Department for Medicaid Services (DMS) within 90 business days from the date of a request for prior authorization - previously, suppliers were required to submit a CMN within 90 business days from the date that the department notifies a supplier that its request for prior authorization is being processed; and requires a record retention period of 6 years in accordance with 45 C.F.R. 164.316. The amendment updates the list of Healthcare Common Procedure Coding System (HCPCS) codes subject to manual pricing and includes a revised durable medical equipment (DME) program fee schedule, incorporated by reference into this administrative regulation. The amendment after comments clarifies the timeframe and requirements for submitting documentation in support of the date of service. The Centers for Medicare and Medicaid Services requires that any billing to Medicaid be made within one (1) from the date of service. Additionally, the amendment after comments removes "size" as a requirement for a physical therapy or occupational therapy evaluation for a wheelchair, to decrease the possibility of discrimination of the recipient based on size. The amendment after comments clarifies policy and complies with formatting requirements in KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce provider administrative burden, clarify policy, update the list of HCPCS codes subject to manual pricing, and update the DME fee schedule. The amendment after comments is necessary for clarification of policy and to comply with KRS Chapter 13A formatting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by reducing provider administrative burden, clarify policy, update the list of HCPCS codes subject to manual pricing, and update the DME fee schedule. The amendment after comments conforms to the content of the authorizing statutes by providing clarification of policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment assists in the effective administration of the authorizing statutes by reducing provider administrative burden, clarify policy, update the list of HCPCS codes subject to manual pricing, and update the DME fee schedule. The amendment after comments assists in the effective administration of the statutes by clarifying policy.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: DMS estimates that 8,355 DME providers are enrolled in the Medicaid 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 recipients in need of an airway vest clearance system will be subject to coverage of the system as a rental for a three (3) month trial period before purchase of the system. DME providers will be given additional time to submit a "Certificate of Medical Need" form after a request for prior authorization is made.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated entities will benefit from a lengthened period of time in which to submit a "Certificate of Medical Need" form and a request for prior authorization is made.

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

(a) Initially: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(b) On a continuing basis: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources or funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds of general and agency 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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not impose or increase any fee to a provider.

(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? Durable medical equipment providers are impacted by this administrative regulation; however, state and local government entities are not.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), 42 C.F.R. 424.57, 45 C.F.R. 162.1002, 45 C.F.R. 164.316.

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 gen-
nerate 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 gen-
erate 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 amendment to this administrative regulation will not 
result in additional administrative costs.

(d) How much will it cost to administer this program for subse-
quently years? The amendment to this administrative regulation will 
not result in additional administrative 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: No additional expenditures are necessary 
to implement this amendment.
GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Landscape Architects
(Amendment)

201 KAR 10:050. Fees.

RELATES TO. 323A.060, 323A.100(1), (4)
STATUTORY AUTHORITY: KRS 323A.060, 323A.070,
323A.100(1), 323A.210(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: The board is
authorized by KRS 323A.060 to promulgate administrative regula-
tions to establish fees for services. This administrative regulation
establishes fees for landscape architect licenses.

Section 1. Fees. The following nonrefundable fees shall be
paid:
(1) Renewal fees:
(a) Active license - $170.
(b) Inactive license - $150.[twenty-five (25) dollars].
(2) Duplicate certificate: twenty-five (25) dollars[ten-(10)-doll-
ars].
(3) Issuance of original license certificate: $200.
(4) Restoration of a suspended license: renewal fee estab-
lished in subsection (1) of this section, plus an amount calculated
pursuant to KRS 323A.100(7).
(5) Reactivation fee: $170.
(6) Issuance of a license on reciprocity basis: $250.
(7)(d) Examination:
(a) Processing fee. A $100 nonrefundable processing fee shall
be submitted with a new application for examination.
(b) Examination sections:
1. Section A: $255; Section B: seventy-five (75) dollars.
2. Section C: $365; Section D: $110 dollars.
3. Section C: $205.
4. Section D: $190.
5. Section E: $265

TONY BARRETT, President
APPROVED BY AGNECY: July 8, 2008
FILED WITH LRC: July 10, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public
hearing on this administrative regulation shall be held on
August 26, 2008 at 9 a.m. at the Board's office, Spindletop Admin-
istration Building, Suite 106, 2624 Research Park Drive, Lexington,
Kentucky 40511. Individuals interested in attending this hearing
shall notify this agency in writing by August 19, 2008, five (5) work-
days prior to this hearing, of their intent to attend. If no notifica-
tion 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 adminis-
trative 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 close of business on September
2, 2008. Send written notification of intent to attend the public hear-
ing or written comments on the proposed administrative regulation
to:
CONTACT PERSON, Jane Gardner, Executive Director, Board
of Examiners and Registration of Landscape Architects, Spindletop
Administration Building, Suite 106, 2624 Research Park Drive,
Lexington, Kentucky 40511, phone (502) 246-2753, fax (502) 246-
2754.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jane Gardner
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation sets fees.
(b) The necessity of this administrative regulation: This regula-
tion is necessary to apprise interested individuals of the fees
charged by the board.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The regulation is in conformity with KRS
323A.060 that requires the board to promulgate administrative regula-
tions to establish fees.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regulation
apprises interested individuals of the fees charged by the board.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change the existing administrative
regulation: This regulation establishes a fee for reactivation and
increases fees for inactive licenses, duplicate certificates, and
Sections C and E of the national examination.
(b) The necessity of the amendment to this administrative
regulation: Costs for inactive registrants, Reactivations and Exam-
inations have increased and the board is currently subsidizing
these costs with other revenue.
(c) How the amendment conforms to the content of the author-
izing statutes: The statute allows the board to establish fees.
(d) How the amendment will assist in the effective administra-
tion of the statutes. The increased fees will pay for the costs of the
administration of these services.
(3) List the type and number of individuals, businesses, organiza-
tions, or state and local governments affected by this administra-
tive regulation: The board anticipates this regulation will affect
approximately 65 individuals, while affecting no businesses, organ-
zations, state or local governments.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
trative regulation, if new, or by the change if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: The individuals affected will pay a higher
fee.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): The increased fees are outlined in the amendment.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The individuals affected will con-
tinue to be served in an efficient manner by the board and staff.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No new costs will be incurred by the change.
(b) On a continuing basis: No new costs will be incurred by the change.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: As
this regulation establishes fees, no additional 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 regula-
tion, if new, or by the change if it is an amendment: The amend-
ments themselves increase some of the fees paid by licensees.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
administrative regulation does establish fees and increases some fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the
regulation is applicable to all.

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 would impact examinees and landscape architects li-
censed by the Kentucky Board of Examiners and Registration of Landscape Architects.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.060 authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not effect the expenditures of the agency, but could increase the revenues by $5,000 annually.

(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? $5,000

(b) How much will it cost to administer this program for the first year? None

(c) 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
Board of Nursing
Amendment

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131(9)
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: To set forth the records which may be expunged and the procedure to follow.

Section 1. Definitions. "Expungement" shall mean that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred. The person may properly reply that no record exists with respect to such person upon any inquiry in the matter.

Section 2. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

1. Consent decrees that are at least five (5) years old, and
2. Agreed orders and decisions which are at least ten (10) years old and which concern one (1) or more of the following categories, provided that there has been no subsequent disciplinary action:
   a. Failed to timely obtain continuing education or AIDS education hours;
   b. Paid fees [by a check that was] returned unpaid by the bank; or
   c. Practiced as a nurse or advanced registered nurse practitioner without a current (active) license, registration, provisional license, or temporary work permit.
3. Agreed orders and decisions which are at least ten (10) years old and which resulted in a reprimand, provided that there has been no subsequent disciplinary action and all of the terms of the agreed order or decision have been met.
4. Agreed orders and decisions which are at least twenty (20) years old, provided that there has been no subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

Section 3 The board shall not report cases which have been expunged to any other state agency, other board of nursing, or any other organization.

JIMMY ISENBERT, President
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 18, 2008

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008, at 10 a.m. (EST) 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 August 14, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 2, 2008. 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. (a) What this administrative regulation does: It sets out what records may be expunged and the process of expungement.
   (b) The necessity of this administrative regulation: The Board is permitted by statute to promulgate this administrative regulation.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out specifics of records that may be expunged.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out specifics of records that may be expunged.
   (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 increases the types of records that may be expunged to include certain consent decrees and certain agreed orders.
   (b) The necessity of the amendment to this administrative regulation: The Board is of the opinion that the types of records that may be expunged should be expanded to include the aforementioned types.
   (c) How the amendment conforms to the content of the authorizing statutes: The Board is permitted to determine the types of records that may be expunged.
   (d) How the amendment will assist in the effective administration of the statutes: By setting out specifics of which records may be expunged.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those nurses with certain types of disciplinary orders, number 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: They will have to request expungement.
   (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 associated with this change.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have their disciplinary
order expunged.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(f) FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
Section 1. Application Fee. (1) The application fee for board review of the Application for Certification as an Alcohol and Drug Counselor shall be twenty-five ($25) dollars.
(2) The application fee shall be nonrefundable.
(3) An Application for Certification as an Alcohol and Drug Counselor shall lapse and be forfeited if the application is not completed within one (1) year from the date it is filed with the board office.
(4) If an applicant does not successfully complete the examinations required by the board for certification within two (2) years from the date the original application form is filed with the board, the applicant shall undergo and retake the Application for Certification as an Alcohol and Drug Counselor prior to sitting for the examination again. The fee for referring the Application form shall be twenty ($20) dollars.
Section 2. Examination Fees. The following fees shall be paid in connection with the examinations required by the board through December 31, 2008:
(1) The fee for the written examination shall be $100.
(2) The fee for the oral examination shall be $150. In the event the oral examination is rescheduled at the request of the applicant, a twenty-five ($25) dollar fee shall be paid prior to rescheduling of the examination.
(3) The fee for retaking either portion of the examination shall be the same fee established in subsections (1) and (2) of this section and shall accompany the Application for Re-Examination.
(4) Applicants have the option to sit for the comprehensive examination offered by the International Certification and Reciprocity Consortium by paying the fees set forth in Section 3 below.
Section 3. Comprehensive Examination Fee. (1) Effective January 1, 2009, applicants for certification shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $150.
Section 4. Initial Certification Fee. (1) The initial certification fee shall be $300($150) for an applicant for certification.
(2) If the applicant successfully completes all requirements for certification, this fee shall cover certification for the initial three (3) year period.
Section 5. [4] Renewal Fees and Penalties. (1) A certificate not renewed within ninety (90) days after the holder's renewal date shall be deemed cancelled in accordance with KRS 309.085(2). A person holding a cancelled certificate shall not use the title “certified alcohol and drug counselor” or hold himself out as such.
(2) The following fees and penalties shall be paid in connection with certification renewal:
(a) Fee: The renewal fee for certification shall be $200 for a three (3) year period, and shall accompany the Renewal Application.
(b) The late renewal fee, including penalty, for the ninety (90) day grace period, shall be $250, for certification for a three (3) year period.
Section 6. Reinstatement of a Canceled Certificate. (1) A canceled certificate may be reinstated within one (1) year of the anniversary date of issue of renewal by:
(a) Submitting a completed "Reinstatement Application";
(b) Payment of a $300 reinstatement fee, for certification for a three (3) year period.
(2) The applicant for reinstatement of a canceled certificate shall submit proof of completion of twenty (20) hours of continuing education for each year since the date of last active certification.
Section 7. Duplicate Certificate and ID Card Fees. (1) The fee for a duplicate certificate shall be twenty ($20) dollars.
(2) The fee for a duplicate ID card shall be ten ($10) dollars.
Section 8. Inactive Status Fee. (1) The enrollment fee for voluntarily placing a certificate in inactive status in accordance with 201 KAR 35:080 shall be fifty ($50) dollars.
(2) The annual renewal fee for certificates enrolled in inactive

GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Alcohol
and Drug Counselors
(Amendment)

201 KAR 35:020. Fees.

RELATES TO: KRS 309.084, 309 085(1)(a)
STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309 085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written and oral examinations which applicants for certification are required to successfully complete. KRS 309.0813(12) requires the board to promulgate an administrative regulation establishing an initial certification fee and renewal fee. This administrative regulation establishes those fees.
status shall be twenty-five ($25) dollars.

(3) The fee for reactivation is $200 for a three (3) year period commencing on the date the Board approves the application for reactivation.

Section 9. Continuing Education Fees. (1) For purposes of this administrative regulation a continuing education sponsor shall be defined as an individual or entity that provides a program of continuing education to certificate holders which has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approve may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty ($50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be $250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of $150.

(6) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty ($50) dollars. A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certification as an Alcohol and Drug Counselor" (2008);
(b) "Application for Re-Examination", 2008;
(c) "Re-certification Application", 2008;
(d) "Re-certification Application", 2008; and
(e) "Continuing Education Sponsor Application", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3298, ext. 222, Monday through Friday, 8:30 a.m. to 5 p.m.

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors 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 minutes of the meeting at which the 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 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH LRC: July 14, 2008 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 3 p.m., local time, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, 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 not be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Gerald Hoppmann, Director, Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the fees for alcohol and drug counselors.

(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth the fees to be paid by an applicant for certification as an alcohol and drug counselor, and for examination, re-certification or reinstatement of certification and inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees. See, KRS 305 084 and 305.085.

(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 fees for applicants and certificate holders, thereby adding clarity to the procedures.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation does not increase any existing fees charged to either applicants or certificate holders. This administrative regulation does set forth a few new nominal administrative fees for re-certification applications and issuing duplicate licenses. Pursuant to statutory authority, new fees are being promulgated for late renewal, reinstatement, inactive certification and renewal of an inactive certificate, and for providing continuing education programs. Finally, this administrative regulation incorporates all relevant forms by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to set forth the fees for late renewal and reinstatement of certification, as well as inactive certificate status and to incorporate the relevant board forms by reference. This amendment enables the board to comply with the statutory requirements of KRS Chapter 13A and place all certificate holders on notice regarding any and all fees associated with their certificate.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by setting forth the exact fees to be charged in the event a certificate holder voluntarily places their certificate in inactive status, requests a duplicate license, fails to renew their certificate in a timely manner, etc. Thus, the board will now be able to say with confidence that all fees charged by the board are set forth in this administrative regulation. The 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 309.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define all fees to be charged by the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 50 applicants for certification as alcohol and drug counselors annually; and 668 certificate holders in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either 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 certification must pay a fee prescribed by the board. This amended regulation sets forth the specific fee amount for application. There are also various other fees associated with various services provided under this regulation.

(b) How much will it cost each of the entities identified in question (3): Application fee for certification is $50 (existing fee, unchanged); Refiling fee for incomplete application over 2 years old is $20 (new fee); Written examination fee is $100 (existing fee, unchanged, set by testing agency); Oral examination fee is $125
(existing fee, unchanged, set by testing agency); Rescheduling fee is $25 (new fee); Fee for retaking written or oral exam is same as above, it remains unchanged, and is set by the testing agency; Fee for initial certification is $180 (existing fee, unchanged, for 3 year certification period); Renewal fee is $200 (existing fee, unchanged, for 3 year certification period); Late renewal fee is $250 (new fee, renewal fee + $50 penalty, for 3 year certification period); Reinstatement fee is $300 (new fee, late renewal fee + $50 penalty, for 3 year certification period); Duplicate certificate fee is $20 (new fee, to cover administrative costs); Duplicate ID card fee is $10 (new fee, to cover administrative costs); Enrolment for inactive status is $50 (new fee); Annual renewal of inactive status is $25 (new fee); Reactivation of inactive certificate is $200 (new fee, for 3 year certification period); Continuing education sponsor fee is $250 (new fee); Continuing education provider fee is $50 (new fee); Annual renewal of continuing education sponsor is $150 (new fee); Review of substantial change to pre-approved continuing education program is $50 (new fee).

(c) As a result of compliance, what benefits will accrue to entities identified in question (3)? The regulation ensures that all certificate holders are aware of the costs associated with obtaining and maintaining their certification. This regulation also places all certificate holders on notice of the cost of failing to renew their certification in a timely manner in accordance with the statutory provisions.

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

(a) Total annual 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 is funded by fees paid by certificate holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this 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 directly or indirectly increase any existing fees. It establishes a new fee for certificate holders who voluntarily place their certificates in inactive status. It also charges a nominal cost for resubmitting applications or requesting duplicate copies of certificates. It also charges a fee pursuant to the Board's statutory authority to certificate holders who fail to timely renew their certificates and are in essence practicing unlawfully in the Commonwealth of Kentucky.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and certificate holders. There is only one class of certificate holder.

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 directly impacts those individuals who voluntarily apply for certification as an alcohol and drug counselor and thus are governed by the Kentucky Board of Certification of Alcohol and Drug Counselors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation to KRS 309.064, 309.065(1)(a), and (2), and 309.081(1), (4), (5), and (12).

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 for the board varies each year depending upon the number of new applicants and the renewals of existing certificate holders. Following fees: Application fee for certification is $50 (existing fee, unchanged); Reinstatement fee for incomplete application over 2 years old is $20 (new fee); Written examination fee is $100 (existing fee, unchanged, set by testing agency); Oral examination fee is $125 (existing fee, unchanged, set by testing agency); Rescheduling fee is $25 (new fee); Fee for retaking written or oral exam is same as above, it remains unchanged, and is set by the testing agency; Fee for initial certification is $180 (existing fee, unchanged, for 3 year certification period); Renewal fee $200 (existing fee, unchanged, for 3 year certification period); Late renewal fee is $250 (new fee, renewal fee + $50 penalty, for 3 year certification period); Reinstatement fee is $300 (new fee, late renewal fee + $50 penalty, for 3 year certification period); Duplicate certificate fee is $20 (new fee, to cover administrative costs); Duplicate ID card fee is $10 (new fee, to cover administrative costs); Enrolment for inactive status is $50 (new fee); Annual renewal of inactive status is $25 (new fee); Reactivation of inactive certificate is $200 (new fee, for 3 year certification period); Continuing education provider fee is $250 (new fee); Continuing education provider fee is $50 (new fee); Annual renewal of continuing education provider is $150 (new fee); Review of substantial change to pre-approved continuing education program is $50 (new fee).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue for the board varies each year depending upon the number of new applicants and the renewals of existing certificate holders. Following fees: Application fee for certification is $50 (existing fee, unchanged); Reinstatement fee for incomplete application over 2 years old is $20 (new fee); Written examination fee is $100 (existing fee, unchanged, set by testing agency); Oral examination fee is $125 (existing fee, unchanged, set by testing agency); Rescheduling fee is $25 (new fee); Fee for retaking written or oral exam is same as above, it remains unchanged, and is set by the testing agency; Fee for initial certification is $180 (existing fee, unchanged, for 3 year certification period); Renewal fee $200 (existing fee, unchanged, for 3 year certification period); Late renewal fee is $250 (new fee, renewal fee + $50 penalty, for 3 year certification period); Reinstatement fee is $300 (new fee, late renewal fee + $50 penalty, for 3 year certification period); Duplicate certificate fee is $20 (new fee, to cover administrative costs); Duplicate ID card fee is $10 (new fee, to cover administrative costs); Enrolment for inactive status is $50 (new fee); Annual renewal of inactive status is $25 (new fee); Reactivation of inactive certificate is $200 (new fee, for 3 year certification period); Continuing education provider fee is $250 (new fee); Continuing education provider fee is $50 (new fee); Annual renewal of continuing education provider is $150 (new fee); Review of substantial change to pre-approved continuing education program is $50 (new fee).

(c) How much will it cost to administer this program for the first year? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

(d) How much will it cost to administer this program for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

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 Certification of Alcohol and Drug Counselors
(Repeal)
201 KAR 35:040. Continuing education requirements.

RELATES TO. KRS 309.065(1)(b)
STATUTORY AUTHORITY: KRS 309.08(3)(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

309.08(3)(1)(b) authorizes the board to promulgate an administrative regulation requiring certified alcohol and drug counselors to complete continuing education requirements as a condition of renewal of their certification. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a course beyond the undergraduate level, that is:
(a) An alcohol and drug counseling course, designated by title or content; or
(b) An academic course, relevant to alcohol and drug counseling.

(2) "Approved" means recognized by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors.

(3) "Continuing education hour" means fifty (50) clock minutes of participation in a continuing educational experience.

(4) "Program" means an organized learning experience:
(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or in a series.

(5) "Provider" means an organization approved by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors for providing continuing education programs.

Section 2. Basic Continuing Education Requirements.[Annual of Continuing Education Hours; Computation of Hours]. (1) A minimum of sixty (60) continuing education hours shall be accrued by an individual holding certification during the three (3) year certification period for renewal with the following exceptions:
(a) A person holding certification whose renewal date is before January 1, 2000 shall receive twenty (20) hours of continuing education for that renewal only.
(b) A person holding certification whose renewal date is after January 1, 2001 and before January 1, 2000 shall receive forty (40) hours of continuing education for that renewal only.
(2) All hours shall be relevant or related to the field of alcohol and drug counseling.

(3) All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a certificate. A certificate holder shall determine prior to attending a specific continuing education program that the program:
(a) Has been approved by the board; or
(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not pre-approved per subsection (3) above, the certificate holder may apply for board approval by providing the information required in Section 5 of this administrative regulation.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a certified alcohol and drug counselor. Continuing education hours may be earned by attending a continuing education program which has prior approval by the board, completion of appropriate academic coursework, or other alternative methods approved by the board. [They may be earned by completing any of the following educational activities:]

(1) Attendance at continuing education programs automatically approved by the board. [Programs not requiring board review and approval. A program provided or approved or sponsored by any of the following providers that is relevant to the practice of alcohol and drug counseling shall be deemed to be relevant to the practice of alcohol and drug counseling, shall be approved without further review by the board and are exempt from the program fee set forth in 201 KAR 35.020, Section 8:
(a) The National Association of Addiction Professionals (NAADAC) and its member boards; [Alcohol and Drug Abuse Counselors (NAADC)];
(b) The American Counseling Association (ACA);
(c) The National Board for Certified Counselors (NBCC);
(d) The International Certification and Reciprocity Consortium (ICRC);
(e) the Kentucky Cabinet for Health and Family Services, Division [Department] of Mental Health and[, Division of] Substance Abuse and its subcontractors.
(f) The Jefferson Alcohol and Drug Abuse Center (JADAC) Training Institute;
(g) The Kentucky School of Alcohol and Drug Studies; [Alcohol and Drug Abuse Counselor];
(a) An Addiction Technology Transfer Center (ATTC); and
(b) State or United States Regional Addiction Training Institute and;]
(2) Academic coursework. An academic course, as defined in Section 1(1) of this administrative regulation shall not require board review or approval. A general education course, or elective course designated to meet undergraduate degree requirements, shall not be acceptable for continuing education credit if the board determines it to be relevant to the practice of alcohol and drug counseling. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.
(3) Alternative methods for obtaining continuing education hours. Programs requiring board review and approval. A program taught in the following programs shall be reviewed and approved by the governing board:
(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (1) of this section;
(b) A program or academic course presented by the certificate holder. A presenter of a relevant program or academic course shall exchange two (2) continuing education hours for each contact hour of Instruction. Credit shall not be issued for repeated instruction of the same course;
(c) A relevant publication in a professionally recognized or juried publication authorized by the certificate holder. Continuing education hours shall be granted for relevant publications as follows:
1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;
2. Ten (10) continuing education hours for each book chapter or monograph published article;
3. Fifteen (15) twenty (20) continuing education hours for each published article in a refereed journal/book chapter or monograph;
4. Twenty (20)[Forty (40)] continuing education hours for each published book.

Section 4. Procedures for Preapprval of Continuing Education [Sponsors and Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 5 of this administrative regulation.
(2) A continuing education activity shall be qualified for approval if the board determines the activity:
(a) Is an organized program of learning;
(b) Pertains to subject matter relating to alcohol and drug counseling;
(c) Enhances the professional competence of the licensee by:
1. Refreshing his knowledge and skills; or
2. Educating on a new topic or subject;
(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally-recognized experience.
(3) The board may monitor or review a continuing education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 5. Subsequent [Reevaluation or] Approval of Continuing
Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of a program:
(a) A published course or seminar description;
(b) The name and qualifications of the instructor;
(c) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
(d) Number of continuing education hours requested;
(e) Official certificate of completion or college transcript from the sponsoring agency or college; and
(f) Application for continuing education credits approval.

Section 6. Application for Approved Sponsor. (1) Any company, individual or association that wishes to be designated as an approved sponsor of continuing education shall complete a "Continuing Education Sponsor Application" referenced by 201 KAR 35.020, and pay the provider fee set forth in 201 KAR 35.020, Section 9.

(2) Designation of Approved Sponsor of Continuing Education status allows the sponsor to advertise the program as pre-approved to meet the continuing education requirements for certification.

(3) Approval shall be for one (1) year from date of approval unless substantial course changes occur. For purposes of this section, substantial course change means a change in the curriculum in excess of twenty (20) percent.

Section 7. Responsibilities and Reporting Requirements of Certificate Holder. (1) During the certification renewal period, the board shall require up to fifteen (15) percent of all certificate holders to furnish documentation of the completion of the appropriate number of continuing education hours through a random audit process. All copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A certificate holder shall:
(a) Be responsible for obtaining required continuing education hours;
(b) Identity his own continuing education needs and seek activities that meets those needs;
(c) Seek ways to integrate new knowledge, skills and activities;
(d) Select approved activities by which to earn continuing education hours;
(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;
(f) Document attendance, participation in, and successful completion of continuing education activity [for] a period of one (1) year from the date of the renewal, and
(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:
(a) Transcript;
(b) Certificate;
(c) Affidavit signed by the instructor;
(d) Receipt for the fee paid to the sponsor; or
(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Comply with the provisions of this administrative regulation.
Failure to comply shall constitute a violation of KRS 335.340(1)(b) and shall result in:
(a) Refusal to renew certification;
(b) Suspension of certification; or
(c) Revocation of certification.

Section 8. Carry-over of Continuing Education Hours, Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following certification renewal period.

Section 9. Appeal of Denial of Continuing Education Hours by the Board. (1) If an application for approval of continuing education hours is denied, the person holding certification shall have the right to appeal the board's decision.

(2) An appeal shall be:
(a) In writing;
(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
(c) Conducted in accordance with KRS Chapter 13B.

Section 10. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:
(a) Medical disability of the certificate holder;
(b) Illness of the certificate holder or an immediate family member;
(c) Death or serious injury of an immediate family member;
(d) A written request for waiver or extension of time involving medical disability or illness shall be:
(i) Submitted by the person holding certification; and
(ii) Accompanied by a verifying document signed by a licensed physician.

(2) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(3) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding certification shall reapply for the waiver or extension.

Section 11. Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement of certification shall:
(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
(b) Obtain sixty (60) hours of continuing education within six (6) months of reinstatement. Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Continuing Education Sponsor Application Form" (2009).
(b) "Continuing Education Program Application Form" (200).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-2296 ext. 225, Monday through Friday, 8:30 a.m. to 5:00 p.m. ["Application for Continuing Education Approval", (1999 Edition), Board of Certification of Alcohol and Drug Counselors, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky Board of Certification of Alcohol and Drug Counselors, 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 Board of Certification of Alcohol and Drug Counselors 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
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

13A to carry out and enforce the provisions of KRS Chapter 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH SECRETARY: July 14, 2008

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 3 p.m., local time, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 September 2, 2008. 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: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296, ext. 224, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining education and prescribes methods and standards for the accreditation of continuing education courses for alcohol and drug counselors.
(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth the requirements for obtaining and providing continuing education and to place all alcohol and drug counselors and continuing education providers on notice.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by KRS 305.085(1)(b) to promulgate an administrative regulation requiring alcohol and drug counselors to complete continuing education requirements as a condition of renewal of their certification.
(d) How this administrative regulation assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to set forth the continuing education requirements for certificate holders, thereby adding clarity to the procedures for both obtaining continuing education and renewing their certification.
(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 primary purpose of this amendment is to clarify the responsibilities of the certificate holders regarding their continuing education requirement. Specificity is added to the sections addressing pre-approval for continuing education providers and the reporting requirements for the credential holders. Finally, the proper form is incorporated by reference.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to set forth the continuing education requirements for certification renewal thereby placing all certificate holders on notice and assisting them in maintaining their credentials.
(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statute by setting forth the specific requirements for obtaining and providing continuing education (KRS 305.085(1)(b) requires the Board to promulgate a regulation establishing the continuing education requirements necessary for certificate renewal. This administrative regulation follows the statutory directive by specifying the hours, methods for acquiring, procedures for approval, and reporting requirements, as well as information relating to renewal and reinstatement.
(3) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 686 certificate holders in the Commonwealth of Kentucky and providers of continuing education programs for certified alcohol and drug counselors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities in question (3) will have to take with this administrative regulation or amendment: All continuing education providers may renew their certificates for a three year period. One of the renewal requirements is to obtain sixty hours of continuing education during the three year certification period. This amendment adds details to answer commonly asked question by the certificate holders. For example, the amended regulation contains an updated listing of pre-approved continuing education providers. It also sets forth the manner by which certificants can obtain education credits. Details regarding the response to an audit and record maintenance are also provided. As to the continuing education providers, a form has been devised and incorporated by reference to assist them in the provision of continuing education courses.
(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 charge to the individual certificate holders who are seeking approval of continuing education credits. Likewise, any individual or entity who wishes to provide a continuing education course may do so without an additional course, unless that individual or entity would like to be designated as a continuing education provider whereby their courses or programs are pre-approved by the board for a specific number of continuing education credits and they may advertise the pre-approval. In that event, the continuing education provider shall pay the fees set forth in 35:020: Continuing education provider fee is $250 (new fee); Annual renewal of continuing education provider is $150 (new fee); Review of substantial change to pre-approved continuing education program is $50 (new fee).
(c) As a result of compliance, what benefits accrue to the entities identified in question (3): The benefit to the credential holders is the ability to renew their certificate annually by participating in continuing education activity. The benefit to the continuing education provider is the ability to advertise that their course or program is pre-approved by the board. This helps ensure attendance and profits for the providers. It is also a major benefit to the credential holders as they will be assured that they are attending a course or program that meets their continuing education requirements.
(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 is funded by fees paid by certificate holders and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: No increase in fees 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 regulation does not directly or indirectly increase any existing fees. The referenced fees for continuing education providers are new and are found in 201 KAR 35:020.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all certificate holders.

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 directly impacts those individuals who voluntarily apply for certification as an alcohol and drug counselor and thus are governed by the Kentucky Board of Certification of Alcohol and Drug Counselors. Specifically regulating the continuing education requirements necessary to maintain certification, its impact on state or local government is negligible at best.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.085(1)(b) and KRS 309.0813(2).

4. Estimate the effects 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? Some revenue may be generated as those who wish to be designated as continuing education providers apply. As this is a new designation, at this point it is impossible to guess the fiscal 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? Same as 4a above.

(c) How much will it cost to administer this program for the first year? The cost to administer this program is absorbed by the Board itself. The Board's expenses are paid by the fees generated by the fees associated with certification. No increase in fees is expected to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Same as 4c above.

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

General Government Cabinet
Kentucky Board of Certification of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(5) and (8)
STATUTORY AUTHORITY: KRS 309.0813(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083(5) requires that applicants for certification shall have completed 270 classroom hours of board-approved curriculum. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) The 270 classroom hours of curriculum required by KRS 309.083(5) and (8) to receive certification as an alcohol and drug counselor shall be specifically related to the knowledge and skills necessary to perform the following twelve (12) core functions which are:

(a) (1) Screening;
(b) (2) Intake;
(c) (3) Client orientation;
(d) (4) Assessment;
(e) (6) Treatment planning;
(f) (6) Counseling;
(g) (7) Case management;
(h) (8) Crisis intervention;
(i) (9) Client education;
(j) (10) Referral;
(k) (11) Reports and recordkeeping; and
(l) (12) Consultation.
(2) A minimum of 150 hours of the total 270 hours is specific to alcohol and/or drug treatment.
(3) A minimum of six (6) hours of professional ethics training related to counseling.
(4) Two (2) hours of training in transmission control and treatment of the human immunodeficiency virus is required as part of the 270 hour total.
(5) Subsections (2) through (4) shall go into effect January 2009.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions is acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that it:
(a) Is an organized program of learning;
(b) Covers an area listed in Section 1 of this administrative regulation;
(c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally-recognized experience.
(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.
(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as follows:
(a) A chapter in a book is equivalent to ten (10) classroom hours.
(b) Authoring or editing a book relevant to addictions therapy may be given credit equivalent to thirty (30) classroom hours.
(4) An applicant shall submit a copy of the title page, table of contents and bibliography.
(5) Publication in a professional refereed journal is equivalent to fifteen (15) classroom hours.
(6) An applicant shall submit the journal page number of the content, and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by core area as set forth in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.
(2) Appropriate documentation of the course shall include:
(a) Date;
(b) Title;
(c) Description;
(d) Sponsoring organization;
(e) Presenter and presenter's credentials;
(f) Number of contact hours attended; and
(g) Certificates of attendance or transcript.

Section 4. Certification as an alcohol and drug counselor in the International Certification and Reciprocity Consortium shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification set forth in KRS 309.083.

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors 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 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008

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VOLUME 35, NUMBER 2 – AUGUST 1, 2008

FILED WITH LRC: July 14, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 3 p.m., local time, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 811 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at the 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 August 29, 2008. 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: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 811 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 309.083(5) requires that applicants for certification shall have completed 270 classroom hours of board-approved curriculum. This administrative regulation identifies the areas of study that will satisfy the requirement.
(b) The necessity of this administrative regulation: The necessity of this regulation is to place applicants for certification on notice of the specific classroom requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by KRS 309.083(5) to specify the curriculum necessary for obtaining certification as an alcohol and drug counselor. This administrative regulation sets forth the detailed requirements which applicants must meet.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation specifies the academic work which will satisfy the 270 hour statutory requirement, thereby adding clarity to the procedures. This will assist advisors in the colleges and universities who are trying to assist students who wish to become alcohol and drug counselors, and it will ensure that applicants meet the necessary requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This regulation changes the 270 hour requirement by specifying that 135 hours must be specific to alcohol and/or drug treatment; a minimum of 6 hours of training in professional ethics; and a 2 hour course of training in transmission control and treatment of HIV.
(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to set forth the classroom requirements for applicants for certification and to ensure that the proper number of hours are obtained in specific areas. This in turn improves the quality of the educational experience of alcohol and drug counselors across the Commonwealth of Kentucky.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by setting forth the specific classroom requirements necessary for application for certification as required by KRS 309.083(5).
(d) How the amendment will assist in the effective administration of the statutes: This regulation will clearly define the classroom requirements necessary for certification application thereby increasing the number of acceptable applicants who will be approved to take the examination to become alcohol and drug counselors.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are approximately 50 applicants for certification as alcohol and drug counselors in the Commonwealth of Kentucky 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 now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take with respect to this administrative regulation: Applicants for certification will henceforth be required to complete 270 hours in coursework, as follows: 135 hours must be specific to alcohol and/or drug treatment; a minimum of 6 hours of training in professional ethics; and a 2 hour course of training in transmission control and treatment of HIV.
(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 associated with this administrative regulation. The applicants are not required to add hours to their graduate studies to obtain certification; rather they are required to concentrate in the area of alcohol and drug studies.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the applicants is an increased likelihood that their application will be approved by the board and they will be able to sit for the professional examination and enter the profession. It will also result in alcohol and drug counselors who are better prepared and have a stronger academic background to practice alcohol and drug counseling.
(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.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's development is funded by fees paid by certificate holders and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change, if it is an amendment. No increase in fees will be necessary to implement this amended regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended regulation does not establish any fees, nor does it directly or indirectly increase any existing fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants.

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 impacts the Kentucky Board of Certification of Alcohol and Drug Counselors which is housed for administrative purposes in the Division of Occupations and Professions within the Finance and Administration Cabinet.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.083(5) and (8).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not anticipated that this administrative regulation will generate any revenue for any agency as it pertains to the educational requirements.
necessary to become a certified alcohol and drug counselor.

(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 answer is the same for this subsection as in subsection (a) above.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated to administer this program. The board’s activities are paid for by the fees its certificate holders are required to pay. The board is already monitoring the educational requirements of its applicants and that cost is covered by the fees currently generated.

(d) How much will it cost to administer this program for subsequent years? The answer is the same for this subsection as in subsection (c) above.

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

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

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (Amendment)

VOLUME 35, NUMBER 2 – AUGUST 1, 2008

202 KAR 7:030. Fees of the board.

RELATES TO: KRS 311A.145
STATUTORY AUTHORITY: KRS 311A.145
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.145 authorizes the board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation establishes these fees.

Section 1. The skills evaluation[Examination] fee shall be fifty (50) dollars. This fee shall be received from students from all disciplines[which includes the written examination]. A retesting fee shall be fifty (50) dollars.

Section 2. EMS-TEI. (1) EMS-TEI Application fee shall be $500. This fee includes the licensing fee for the initial (5) year period. (2) EMS-TEI Renewal licensing[Application] fee shall be $500 which shall be valid for subsequent (5) year period.

(3) In addition to the application fee, an EMS-TEI shall remit an additional fee for each course taught which has the potential to lead to state or national certification or licensure as follows:

(a) Emergency Medical First Responder or First Responder - Fifty (50) dollars;
(b) Emergency Medical Technician or EMT Basic - Seventy (75) dollars;
(c) Emergency Medical Technician Advanced - $150; and
(d) Paramedic - $200. The fee shall apply to entities making application to function as a free-standing EMS-VA. An EMS-TEI shall not be required to pay the EMS-VA fee to serve as an EMS-VA if their certification as an EMS-TEI remains in effect.

(4) EMS-TEA application renewal fee—$250

Section 3. Issuance of Certificates and Licenses[Including Reciprocity]. (1) The certificate or license or EMS instructor application fee shall be ten (10) dollars.

(2) First responder Initial certification fee shall be fifteen (15) dollars.

(3) EMT Initial certification fee shall be thirty (30) dollars.

(4) Advanced EMT initial certification fee shall be thirty (30) dollars.

(5) Paramedic Initial license fee shall be sixty-five (65) dollars.

(6) Level I or II(6) EMS instructor Initial certification fee shall be eighty-five (85) dollars.

(7) Level III EMS instructor Initial certification fee shall be eighty-five (85) dollars.

Section 4. Recertification and Relicensure. (1) First responder recertification fee shall be fifteen (15) dollars.

(2) EMT recertification fee shall be twenty-five (25) dollars.

(3) Advanced EMT recertification fee shall be forty (40) dollars.

(4) Paramedic recertification fee shall be fifty (50) dollars.

(5) Level III(4) EMS instructor recertification fee shall be ninety (90) dollars.

(6) Level I and II EMS instructors recertification fee shall be seventy (70) dollars.

(7) The recertification fee for an Individual recertifying as a Level II, III, or IV EMS Instructor shall be $135.

Section 5. Application for reciprocity or for temporary certificate for all levels shall be a fee of $125. This fee is in addition to the application fee and Initial certification fee for each level.

Section 6. Ground Ambulance Service Licensing and Relicensing. (1) Initial prelicensure fee, to establish compliance with 202 KAR 7:501 shall be $2,500($1,500).

(2) Transfer of license fee shall be $1,500($4,000) dollars.

(3) [Blank]

(4) Relicensure fee for up to, and including, the inspection of five (5) licensed units shall be $50($256).

(5) Relicensure required as the result of a cited[Relicensure inspection due to major] deficiency shall be a fee of $100 per cited deficiency.

(6) Inspection of additional or replacement units for an existing license[Addition or replacement of units to existing license] if inspected at the provider’s site shall be a fee of $150($400) per unit and if inspected at the inspector’s site shall be a fee of $100 per unit (50) dollars.

Section 7. Administrative Fees. (1) Late fee shall be fifty (50) dollars.

(2) Late fee shall be twenty-five (25) dollars.

(3) Additional fee for each shall be twenty-five (25) dollars.

(4) Application for reinstatement for all levels fee shall be a fee of $150. This fee is in addition to the application fee and Initial certification fee for each level.

Section 8. ALS Medical First Response Providers. (1) Initial license fee to establish compliance with 202 KAR 7:501 shall be $250.

(2) Relicensure inspection up to four (4) vehicles shall be a fee of $200($400).

(3) Each additional unit for inspection shall be a fee of thirty (30) dollars.

Section 9. Air Ambulance Service Licensing and Relicensing. (1) Initial prelicensure fee, to establish compliance with 202 KAR 7:510 shall be $5,000.

(2) Transfer of license fee shall be $2,500.

(3) Relicensure fee for up to, and not including, the inspection of five (5) licensed aircraft shall be a fee of $1,000.

(4) Relicensure required as the result of a cited deficiency shall be a fee of $500 per cited deficiency.

(5) Inspection of additional or replacement units for an existing license shall be a fee of $250 per unit and shall be inspected at the provider’s site.

ROB ROTHENBURGER, Chairman

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 26, 2008 at 10 a.m at The Kentucky Community and Technical College System, Room 1029, 300 N. Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, August 19, 2008 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 Tuesday, September 2, 2008. 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: Lee W. Rowland, Esq., Legal Counsel, Kentucky Board of Emergency Medical Services, 300 N. Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lee W. Rowland, Esq.

1. Provide a brief summary of:
(a) What this administrative regulation does: Provides the schedule of fees and charges for First Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, Paramedics, Educational Institutions, Instructors and Ambulance Providers.

(b) The necessity of this administrative regulation: Establishes the fees for First Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, Paramedics, Educational Institutions, Instructors and Ambulance Providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.145 requires the board to prescribe reasonable fee schedules and charges for examination; issuance, renewal, and reinstatement of licenses; issuance, renewal, and reinstatement of certifications; inspections and reinspections; applications; and other services and materials provided by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It established the reasonable and charges required for First Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, Paramedics, Educational Institutions, Instructors and Ambulance Providers.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It increases certain fees and created new fees.

(b) The necessity of the amendment to this administrative regulation: Increases revenues required by increased costs of operations of the board since 2003 and due to legislative and administrative budget cuts effective in 2008.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.145 requires the board to prescribe a reasonable schedule of fees and charges.

(d) How the amendment will assist in the effective administration of the statutes: It increases the revenues required by increased costs of operations of the board since 2003 and due to legislative and administrative budget cuts effective in 2008.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 650 First Responders; 5,450 Emergency Medical Technicians; 58 Advanced Emergency Medical Technicians; 1,400 Paramedics; 255 Instructors; 45 Educational Institutions; 235 Ground Ambulance Services; 1 ALS Medical First Response Agency and 12 Air Ambulance 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: None known.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Only the fee established in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The efficient operation of the board's systems office.

5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Minimal cost.
(b) On a continuing basis: Minimal cost.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees and charges collected pursuant to the established fee schedule.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

TIERING: Is tiering applied? Yes tiering is applied. Paramedics pay higher fees than Advanced Emergency Medical Technicians. Emergency Medical Technicians and First Responders due to heightened skills, procedures and responsibilities; Advanced Emergency Medical Technicians pay higher fees than Emergency Medical Technicians and First Responders due to heightened skill, procedures and responsibilities; and Emergency Technicians pay higher fees than First Responders due to heightened skill, procedures and responsibilities. Instructors are separate. Air ambulance services pay higher fees than ground ambulance services due to the fact they have a large service area. Also due to the geographical location of their aircraft the board incurs additional expense in the inspection and oversight of the air ambulance services.

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? Any local county or city governments or fire departments that operate ambulance services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.145

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. It will increase the expenditures if any local county or city governments or fire departments incur such fees as part of its operation of ambulance services in that this regulation sets fees at a higher than current rates. There has been no alteration to the fee structure since November, 2003.

(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? Unknown if it will generate any revenue for local county or city governments or fire departments that operate ambulance services.

(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? Same as initial year as stated in (a).

(c) How much will it cost to administer this program for the first year? Minimal.
KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(Amendment)

202 KAR 7:510. Air ambulance services.

RELATES TO: KRS 311A.030, 311A.190
STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of air ambulance services the EMS system and the licensing of air ambulance services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of this administrative regulation establishes minimum licensing requirements for air ambulance providers.

Section 1. Provider Licensing Requirements. (1) A person or entity shall not provide, advertise, or profess to engage in the provision of air ambulance services originating in Kentucky without first obtaining a license from the board pursuant to this administrative regulation.
    (2) A provider shall comply with local ordinances, state and federal statutes and administrative regulations.
    (3) A provider shall display its license in a prominent public area at the service base station and all satellite locations. The following information shall be included on the license:
        (a) Operating name of the provider;
        (b) Physical location of the base station;
        (c) The number and physical location of satellite stations, if any, operated by the licensee;
        (d) The license classification;
        (e) The level of service provided;
        (f) The number of rotor and fixed-wing aircraft operated by the provider; and
        (g) The specific geographic area to be served by the licensee.
(4) Providers shall provide the KBEMS Office with an accurate map and a written description of its geographic service area within the commonwealth, shall identify with specificity the complete boundary of the area served by the provider when applying for initial licensure or if the service area has changed since the last map was provided to the KBEMS Office.
    (5) A licensed provider may respond to emergency calls outside of its geographic service area only if the provider is providing:
        (a) Mutual aid under an existing agreement with another licensed provider whose geographic service area includes the area in which the emergency call is made;
        (b) Disaster assistance; or
        (c) Nonemergency transfers from damaged or closed health facilities.

Section 2. Licensing, Inspection and Change of Ownership. (1) To obtain a license, an air ambulance provider shall file an "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (69/2), with the KBEMS Office.
    (2) An applicant for a license or a licensee shall, as a condition precedent to licensing or relicensing, be in compliance with all applicable sections of this administrative regulation as determined through means including a physical inspection process, subject to subsection (4)(b)(2) of this section.
    (3) A license shall expire on December 31 following the original date of issue and shall subsequently expire annually on December 31 of each year.

    (4) A license may be renewed upon:
        (a) Payment of the prescribed fee; and
        (b) Upon action by the board, based upon recommendation of staff.

1. That the air ambulance provider has current accreditation through a board-recognized accreditation process such as the Commission on Accreditation of Medical Transport Systems (CAMTS); or
2. Following the physical inspection of the provider.

(5) A license to operate shall be issued only for the person or entity, service area, and premises, including the number of aircraft, named in the application, and shall not be transferable.

(6) A new application shall be filed if a change of ownership of an air ambulance service occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of the assets, capital stock, or voting rights of a corporation or provider operating an air ambulance is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person or entity from another.

(7) If a new application for a license is filed due to change of ownership, the new license shall be issued for the remainder of the current licensure period.

(8) There shall be full disclosure to the board of the changes in ownership, such as name and address, of:
        (a) Each person having direct or indirect ownership interest of ten percent or more in the service;
        (b) Officers and directors of the corporation, if a service is organized as a corporation; or
        (c) Partners, if a provider is organized as a partnership.

(9) Representatives of the board shall have access to the service during hours that the service operates.

(10) A regulatory violation identified during an inspection shall be transmitted in writing by the board and given to the provider.

(11) The provider shall submit a written plan for the elimination or correction of a regulatory violation to the KBEMS Office within ten (10) working days after receipt of the statement of violation and shall include the specific date by which the violation may be corrected.

(12) Within ten (10) working days following a review of the plan, the KBEMS Office shall notify the provider in writing whether or not the plan is accepted as providing for the elimination or correction of the violation.

(13) The KBEMS Office may conduct a follow-up visit to verify compliance with the plan.

(14) If a portion or all of the plan is insufficient:
        (a) The KBEMS Office shall specify the reasons the plan cannot be accepted; and
        (b) The provider shall modify or amend the plan and resubmit it to the KBEMS Office within ten (10) days after receipt of notice that the plan is insufficient.

(15) Unannounced inspections [by-the KBEMS Office] may be conducted at the discretion of the board or its representative for a:
        (a) Complaint allegation;
        (b) Follow-up visit; or
        (c) Routine inspection.

(16) Any licensed provider may be recommended for discipline based upon:
        (a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;
        (b) Failure to eliminate or correct regulatory violations;
        (c) Falsifying an application for licensing;
        (d) Changing a license issued by the board;
        (e) Attempting to obtain or obtaining a license by:
            1. Fraud;
            2. Forgery;
            3. Deception;
            4. Misrepresentation; or
            5. Subterfuge;
        (f) Providing false or misleading advertising;
        (g) Falsifying, or causing to be falsified a:
            1. Patient record;
            2. Service run report; or
            3. Other reports provided to the KBEMS Office;
        (h) Providing an unauthorized level of service;
(l) Demonstrating a history of staff violations that have resulted in disciplinary action;
(m) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of statutes or administrative regulations;
(k) Issuing a check for a license on an invalid account or an account with insufficient funds to pay fees to KBEMS; or
(l) Submitting fraudulent or misleading claims for reimbursement to:
1. An individual;
2. A private insurance company; or
3. A governmental agency;
(m) Any violation of KRS Chapter 311A or administrative regulations promulgated thereunder.

Section 3. Utilization of Aircraft by Licensed Providers. (1) At the time of initial inspection, each provider shall inform the KBEMS Office of the make, model, year, serial number, and FAA identification number for each aircraft it uses.
(2) Except as provided by this administrative regulation, an aircraft shall not be placed into operation until after the board has been notified and has verified through a physical inspection that the aircraft meets the requirements of this administrative regulation.
(3) Each provider shall notify the KBEMS Office via U.S. mail, email, or fax, no later than the next board business day, of the permanent removal of any licensed aircraft from service by the license holder.
(4) A licensed provider may use a replacement aircraft on a temporary basis if an approved aircraft is out of service, if:
(a) The KBEMS Office receives notice within twenty-four (24) hours or on the next business day by fax or email of the need for the provider to place an aircraft into service on a temporary basis;
(b) Within five (5) business days, the provider provides the board written notice identifying:
1. The make, model, year, serial number, and FAA identification number for the aircraft being removed from service and for the aircraft being placed into temporary service; and
2. The temporary replacement aircraft meets the requirements of this administrative regulation.
(5) A temporary replacement aircraft shall not be used for more than sixty (60) days, unless the KBEMS Office has verified through a physical inspection that it meets the requirements of this administrative regulation.
(6) The KBEMS Office shall be notified by email or fax within twenty-four (24) hours or on the next business day when a temporary aircraft is removed from service and the original licensed aircraft is returned to service.
(7) A provider that fails to meet the reporting requirements for use of a temporary aircraft may be required to immediately cease use of the replacement aircraft until the reporting requirements are met.
(8) A provider that fails to remove a temporary aircraft from service upon written order may be fined an amount not to exceed $1,000 per day for each day or partial day the aircraft is in service and the reporting requirements are not met.
(9) This administrative regulation shall not prevent a provider from utilizing other means of transporting patients in:
(a) Disasters;
(b) Mass casualty incidents; or
(c) Extraordinary scene conditions that may impair the safety of the patient or personnel operating at the scene.

Section 4. Provider Management Requirements. (1) All providers shall:
(a) Maintain an organizational chart that establishes lines of authority, including the designation of:
1. An administrator responsible for ensuring compliance with this administrative regulation during the daily operation of the service; and
2. A designee who shall serve in the absence of the administrator;
(b) Maintain records and reports at the ambulance service base station or at a location where the records can be made readily available to KBEMS staff including:
2[a] An original, microfilm, electronic equivalent, or copy of all run reports whether reported on:
1[a] The EMS-BA and EMS-EBB "Kentucky Emergency Medical Ambulance Run Report" (9/98), with all nonshaded portions of the run report completed as appropriate for each patient and each run; or
2[b] A paper or electronic run form developed by the provider that contains all of the data components of the nonshaded areas of the EMS-BA and EMS-EBB (9/98) or the latest data components required by the board;
(c) Maintain a copy of all completed run report forms, maintained to ensure confidentiality and safekeeping, for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age. Copies of run reports shall be accessible so as to be immediately available to the board, KBEMS Office or representatives upon request;
(d) Maintain personnel files for each employee or volunteer who staffs an aircraft. Personnel files shall be maintained for a minimum of five (5) years following separation from employment. As a minimum, personnel files shall contain:
1. Current certification or licensure with corresponding numbers and expiration dates for the position that the individual fulfills on the aircraft;
2. Proof that the provider has conducted a pre-employment criminal background check (A pre-employment criminal records check for each individual added to the service); and
3. Health records, maintained in accordance with state and federal laws and administrative regulations, in a separate secure file, that include:
   a. A post-offer of employment health assessment;
   b. Annual tuberculin skin testing or other method of evaluation;
   c. Hepatitis-B vaccinations and seroconversion testing unless exempted by the employees' physician, or an employee signed waiver; and
   d. A record of all work-related illnesses or injuries;
(e) Maintain a plan and records for the provision of continuing education for staff and volunteers including a written plan for the method of assessment of staff continuing education needs and a coordinated plan to meet those needs including:
1. Training or continuing education rosters that include the printed name, signature, and certification or license number of those in attendance;
2. A curriculum vitae for the instructor; and
3. A brief outline of the presentation including the educational objective for the offering and the method of presentation used for the presentation;
(f) Maintain an infection control plan in accordance with KYOSHA guidelines;
(g) Maintain a written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, aircraft, equipment, and staff;
(h) Maintain a written plan for the quality assessment of patient care and provider quality improvement including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care. This plan shall address as a minimum:
1. Aircraft maintenance as it impacts the clinical aspects of patient care delivery, employee health and safety;
2. Compliance with protocols and operating procedures;
3. Transport response and transport limitations;
4. Assessment of dispatch procedures;
5. Aircraft operations and safety;
6. Equipment preventive maintenance programs; and
7. A process for the resolution of customer complaints;
(g) Maintain a written plan for training personnel and responding to mass casualty incidents and disasters, which shall include an internal incident command structure and how it will integrate into a community response plan;
(j) Maintain an orientation program for all personnel related to:
1. Aircraft, scene, ground and base safety;
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2. Communication equipment at the base station and on each aircraft;
3. The location and use of fire extinguishers;
4. Transport response and transport limitation standards;
5. Map reading and geographic orientation;
6. Mutual aid agreements;
7. Cleaning of equipment including aircraft;
8. Stretcher operations and use;
9. Completion of run reports; and
10. Other standard operating procedures that have been established by the provider;

(i) Maintain proof of professional liability malpractice insurance; and
(ii) Maintain proof of aircraft liability insurance.

(iii) Provide a copy of the current FAA Air Carrier Certificate; and

(iv) Maintain a written policy regarding patient criteria for interfacility transfers including a written statement of medical necessity certified by a physician for each patient transported.

(v) Each provider shall, in the county in which their base station or a substation is located;

(a) Document evidence of participation in county emergency management disaster exercises, if conducted;

(b) Coordinate with the county emergency management director for the possible utilization of a provider’s personnel for use in the emergency operations center in a disaster; and

(c) Maintain a copy of the county and state emergency management agency’s emergency operations plan at the ambulance base station.

Section 5. Operating Requirements. (1) All air ambulance providers shall provide service twenty-four (24) hours a day, seven (7) days a week, subject to safety issues and weather conditions established in Part 139 of the FAR. These provisions may be met through a call system or through mutual aid agreements.

(2) A provider shall have a written plan developed in consultation with the air ambulance provider’s medical director that requires:

(a) Utilization of the current air medical intake flow chart as approved by the board;

(b) Dispatch of requests for emergency service within two (2) minutes of the call taker’s determination of the correct address or location of the emergency incident site and completion of a weather check;

(c) Disclosure of the accurate availability of provider’s aircraft, including the estimated time of arrival to the requesting agency. If the provider’s closest aircraft is not available, and so requested by the requesting agency, the provider shall attempt to contact the closest known aircraft to the scene; and

(d) If utilizing a satellite tracking mechanism that all air ambulance providers shall share current aircraft position data through computer interface, with any other air ambulance provider.

(3) To assure all requests for service are promptly answered;

(4) Requests for emergency service shall be dispatched within two (2) minutes of the call taker determining the correct address or location of the emergency incident site and completion of a weather check.

(4) Any provider that determines it is unable to have an aircraft responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the requesting agency of the inability to respond within the ten (10) minute time frame and advise the caller of the time frame in which an aircraft would be available to respond. The requesting agency shall then assume responsibility for making the decision to wait for that aircraft or to contact another air ambulance provider.

(5) A provider may enter into mutual aid agreements with other Kentucky licensed air ambulance services operating within the same geographic area.

(6) or contiguous counties. Those agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided;

(b) Response personnel, including levels of training or education, and providers for joint in-service training or education if appropriate;

(c) Response aircraft, including unit identifiers and the station or location from which the aircraft shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other telecommunications procedures between the air-ambulance providers with which the provider has mutual aid agreements;

(f) On-scene coordination and scene control including medical direction if several agencies respond to same incident;

(g) Exchange of patient information, records, and reports as allowed by law; and

(h) The effective date and any changes or modifications.

(i) A provider may accept a request to provide service outside of its service area except it shall require documentation from the requesting facility or provider that a good faith effort was made to utilize a provider licensed for the area.

(j) A provider shall have a written plan developed in consultation with the air ambulance provider’s medical director that requires:

(a) Radio equipment used in emergency medical services aircraft shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the provider’s office;

(b) Aircraft shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting dispatch centers and hospitals;

(c) Aircraft shall have air-to-air, ground-to-air, and air-to-ground communication capabilities and shall be capable of communicating with ground personnel to properly coordinate the landing and primary medical responders on the ground who may be caring for the patient; and

(d) Aircraft shall have a minimum of two (2) portable communication devices capable of operating on the provider frequency that shall be provided for portable operations when away from the aircraft;

(e) All aircraft when approaching and departing a landing zone in uncontrolled airspace shall announce their intentions to other aircraft via 123.025 MHz.

(5)(44) Air ambulance providers shall comply with FAR specifications for flight following and position plotting by a provider based or maintained communication center. The communication center shall be equipped with communications equipment and staffed by a properly trained ACS to receive and coordinate all calls as provided for by FAR. If providing fixed-wing service, this requirement may be met by filing an FAA flight plan.

(10)(42) An ACS shall have documented training appropriate to the transport mission of the provider that shall as a minimum address the following areas:

(a) FAA and FCC regulations pertinent to air ambulance operations;

(b) Air medical radio communications;

(c) Medical terminology;

(d) Flight coordination and utilization;

(e) Navigation and weather interpretation;

(f) Flight following; and

(g) Emergency procedures.

(11)(43) An air ambulance provider shall provide proof that it:

(a) Complies with FAR pertaining to maintenance inspections, flight, and duty time;

(b) Complies with FAA and FAR required maintenance activities; and

(c) Holds FAR required air ambulance operations specifi-
Section 6. Aircraft Requirements. (1) Fixed and rotor-wing air ambulance aircraft shall:
(a) Have an entry that allows patient loading and unloading without tilting the patient greater than thirty (30) degrees from the horizontal axis;
(b) Have a heating system that maintains a temperature of not less than sixty-five (65) degrees Fahrenheit in the patient compartment during patient transport in winter weather conditions or demonstrates a procedure for maintaining patient temperature sufficient to prevent hypothermia;
(c) Have an air-conditioning system that shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit patient compartment during patient transport in summer weather conditions. This requirement shall be met within one (1) year from the effective date of this administrative regulation; or demonstrates a procedure for maintaining patient temperature sufficient to prevent hyperthermia;
(d) Utilize an alternate aircraft or alternate mode of transportation, if the environment within the aircraft is such that it would be detrimental to the staff’s physical welfare or the patient’s condition, until those conditions are alleviated;
(e) Be configured in such a way that air medical personnel shall have access to the patient in order to begin and maintain basic and advanced life support;
(f) Have interior lighting adequate to ensure complete observation of the patient;
(g) Have a procedure in place to limit light in the cockpit area during night operation;
(h) Have an electric inverter, with two (2) outlets, to convert direct current (DC) to alternating current (AC) for operation of specialized equipment, such as an isolable or intra-aircraft balloon pump;
(i) Have equipment, stretchers, and seating:
1. Arranged so as not to block rapid egress by air ambulance personal or patients; and
2. Affixed or secured in FAA approved racks, compartments, or strap restraints which meet FAR “G” loading requirements;
(j) Have a patient stretcher or litter which:
1. Has the capability to raise the head of the patient; and
2. Has appropriate devices to secure the patient to the stretcher.
(k) Provide proof of an FAR Part 135 certificate with an FAR required air ambulance specification; and
(l) Not transport more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the aircraft during flight.
(2) Fixed-wing aircraft shall be pressurized if patient flights are to exceed 6000 feet mean sea level.

Section 7. Air Ambulance Medical Personnel. (1) A rotor-wing air ambulance service operating an ALS aircraft shall assure that it is minimally staffed by:
(a) A pilot as required by this administrative regulation, and
(b) Two (2) attendants that meet one (1) of the following staffing configurations:
1. A licensed paramedic RN or licensed practical nurse RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 311.5;
2. A RN and RN both of which are authorized to practice in the state of Kentucky pursuant to KRS Chapter 311.5;
3. A physician or advance practice nurse RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 311.5 and RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314.
(c) Each attendant must additionally maintain documentation of current certification or the equivalent thereof as approved by the board of the following:
1. ACLS
2. BLS
3. PALS
4. PHTLS or ITLS or TNATC; and
5. NRP [One (1) of whom shall be a RN licensed by KBN] (2) BLS fixed-wing patient transports (missions) shall be minimally staffed by:
(a) A pilot as required by this administrative regulation; and
(b) Two (2) attendants whom shall be minimally certified as EMT’s by the board certified by the board as an EMT.
(b) ALS fixed-wing patient transports shall be minimally staffed by:
(a) A pilot as required by this administrative regulation; and
(b) RNs (at least) Two (2) attendants (on each flight) of which:
1. RN. The first patient attendant (on an ALS fixed-wing patient mission) shall be:
   (1) A flight nurse; or
   (2) A RN. A licensed RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314, qualified by specific patient population, experience, and current competencies in emergency and critical care; and
2. RN. The second patient attendant (on an ALS fixed-wing patient mission) shall be:
   (1) A licensed RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314, qualified by specific patient population, experience, and current competency in emergency and critical care;
   (2) A licensed paramedic;
   (3) A certified or registered respiratory therapist qualified by specific patient population, experience, and current competency in mission-specific patient care; and
   (4) A physician or advance practice nurse RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 311.5, qualified by relevant training, experience, and current competency in mission-specific patient care;
(c) A staffing variance on an ALS fixed-wing patient mission necessitated by staffing or patient care requirements shall not be permitted unless prior approval is granted by the medical director or designee.
(4) ALS specialty care transport patient transports by rotor or fixed wing air ambulance shall be minimally staffed by:
(a) A pilot meeting the requirements of this administrative regulation; and
(b) Two (2) attendants with relevant training, experience and current competency in transport-specific patient care as authorized by the medical director or their designee of which:
1. The first patient attendant shall be:
   a. A RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314; or
   b. A nurse practitioner; or
   c. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311; and
2. The second patient attendant shall be:
   a. A RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314; or
   b. A Kentucky licensed paramedic;
   c. A certified or registered respiratory therapist;
   d. A nurse practitioner;
   e. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311 [An attendant shall remain with the patient in the patient compartment, at all times during transport];
(5) All regular and specialty care air ambulance patient attendants [medical-flight personnel] shall attend and document flight orientation training [prior to acting as primary medical personnel leave] Flight orientation training shall include:
(a) Attitude physiology;
(b) Aircraft-specific operations and in-flight safety;
(c) Emergency egress and survival training;
(d) Crew resource management [Scene safety]; and
(e) Communication equipment utilization and emergency procedures [Use of extrication equipment];
(6) Scene triage;
(g) Kentucky EMS statutes and administrative regulations; and
(h) Communication equipment utilization and emergency procedures.
(6) All regular air ambulance patient attendants shall complete and document additional flight orientation training to include:
(a) Scene safety;
(b) Use of extrication equipment;
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(c) Scene triage;
(d) Kentucky EMS statutes and administrative regulations;
(e) Advanced airway management;
(f) Anatomy, physiology and assessment of adult, pediatric and neonatal patients as outlined within the program's scope of care;
(g) Cardiac emergencies and advanced critical care;
(h) Burns;
(i) Environmental emergencies;
(j) High risk OB;
(k) Multitrauma emergencies;
(l) Toxicology;
(m) Hazardous materials awareness level training;
(n) Hemodynamic monitoring;
(o) Mechanical ventilation and respiratory physiology; and
(p) Pharmacology;

(7) All regular air ambulance patient attendants shall complete and document annual continuing education which shall include a review of:
(a) Flight control;
(b) Kentucky EMS rules and administrative regulations regarding ground and air transport;
(c) Crew resource management;
(d) Stressors of flight not included in crew resource management;
(e) Survival training; and
(f) Brief maintenance program or competency program for invasive, high risk, or low volume procedures as outlined in the program's scope of care.

(8) An attendant shall remain with the patient in the patient compartment, at all times during transport.

(9) All aircraft, providing ALS care, that are licensed and based in Kentucky shall have(schede) a Kentucky licensed paramedic on board all aircraft that respond to scene flights. A variance from the paramedic requirement for all other flights that is necessitated by patient care requirements, shall be permitted only if the medical director or designee approves the action. All aircraft responding to flights originating in Kentucky shall be licensed by the board.

(10)(49) Aircraft that are licensed in Kentucky but based in contiguous states may use the staffing requirements of the state in which they are located provided they are licensed in that state and the staffing requirements for that state, at a minimum for scene flights shall be:
(a) Paramedic and RN;
(b) RN and RN; or
(c) Physician and RN.

(11)(6) This administrative regulation shall not prevent a provider from utilizing staff other than that required by this administrative regulation in:
(a) Disasters;
(b) Mass casualty incidents; or
(c) Extraordinary scene conditions that may impair the safety of the patient or personnel operating at the scene.

(12) Nothing in this or any other administrative regulation promulgated by the board should be construed as preventing any staffing configuration outlined in this administrative regulation from supplementing or replacing the patient care attendants on a ground ambulance licensed in Kentucky for the purpose of facilitating the care and the transport of a patient when the aircraft was unable to complete a patient flight due to deteriorating weather conditions or other unplanned events or for the purpose of providing a continuum of care from the scene to the aircraft or from the aircraft to the patient's destination. Air ambulance personnel shall be responsible for assuring the availability of necessary equipment to care for the patient during transport.

Section 8. Provider Requirements for Air Ambulance Pilots. The air ambulance provider shall assure that prior to performing any medical service transports the [4(4)—the role wing] PIC complies with all requirements as set forth in 14 FAR Part 135.4. All documentation of having met this requirement shall be provided upon request [shall possess commercial rotorcraft certification or ATP certification and a minimum of 1,600 rotorcraft flight hours as PIC.]

(2) A rotor-wing pilot shall:
(a) Be trained and educated in accordance with operators FAR Part 135 air ambulance operations specifications;
(b) Have a minimum of five (5) hours as PIC in the specific aircraft type prior to performing emergency medical services missions;
(c) Have five (5) hours local area orientation which shall include mission-specific night orientation of at least two (2) hours flight time; and
(d) Be specifically trained and experienced in flying the terrain and conditions unique to the flight program.

(3) The fixed-wing pilot shall:
(a) Be trained in accordance with operators FAR Part 135 operations specifications; and
(b) Have five (5) hours as pilot in command in the specific fixed-wing aircraft type prior to performing emergency medical services missions.

Section 9. Basic Life Support Equipment and Supplies. (1) All color air ambulance providers shall carry and maintain, in full operational order, the following minimum BLS equipment and supplies:
(a) Suction[, ventilation, and blood-pressure] equipment, which shall include:
   1. Two (2) sources of suction apparatus, one (1) of which shall be fixed, and one (1) of which shall be portable/mechanically operated;
   2. Rigid catheters;
   3. Flexible catheters in adult, pediatric and infant sizes;
   4. Bulb syringe or mecumion aspirator device for Infant and neonate suction;
   5. Disposable adult, pediatric and infant bag-valve-mask ventilation units with oxygen reservoir, oxygen tubing and masks;
   6. Nasopharyngeal and oropharyngeal airway kits in sizes for adults and children with water soluble lubricant; and
   7. Adult, obese adult, child, and infant cogyphon manometer cuffs with stethoscope. A permanently mounted cogyphon manometer shall not satisfy this requirement.
(b) Oxygen and airway supplies and equipment, including:
   1. An installed[4—fixed] oxygen system with a capacity of at least 2,000 liters of oxygen shall be supplied for each aircraft;
   2. Portable oxygen [delivery] system shall supply at least 300 liters;
   3. There must be a backup source of oxygen. This backup source can be the required portable tank as long as carried in the patient care area during flight in the event the main system fails. Sources must be delivered via a nongravity dependent delivery device;
   4. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute,
   5. Oxygen supply tubing;
   6. Transparent nonbreather oxygen masks for adults and pediatrics[children]; and
   7. Nasal cannulas for adults and pediatrics[children];
   8. Disposable adult, pediatric, and infant bag-valve-mask ventilation units with oxygen reservoir, oxygen tubing and masks;
   9. Nasopharyngeal and oropharyngeal airway kits in sizes for adult and children with water soluble lubricant; and
   10. Bite stick;
(c) Trauma equipment[and Bandage, bandaging] supplies (and tape), including:
   1. Two (2) sterile universal dressings at least 10 in. x 10 in. compactly folded and packaged;
   2. Four (4) by four (4) gauze pads;
   3. Soft roller self-adhering bandages, various sizes;
   4. Four (4) rolls of adhesive tape, minimum of two (2) sizes;
   5. Two (2) sterile burn sheets;
   6. Two (2) eye protector pads and shields or an approved substitute;
   7. Two (2) occlusive dressings; and
   8. Shears for bandages;
   9. Splints, including:
      a. Lower extremity mechanical traction splint in adult and pediatric sizes; and
b. Splints for arm, full leg and foot using semi-rigid immobilization devices; and

d. Immobilization devices, including:
   a. Lower adult and pediatric long spine boards or other full body immobilization device with straps and cervical immobilization accessories;
   b. Five (5) rigid, still cervical collars in four (4) different sizes including pediatric sizes; and
c. Towel rolls or other bulk dressings to be used for cervical immobilization for infants;
   d. Patient assessment equipment and [Miscellaneous] supplies, including:
   1. Adult, obese adult, pediatric, and infant sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement. [Hand-held flashlight capable of providing adequate lighting to assess a scene or a patient away from the aircraft;]
   2. One (1) penlight;
   3. An AED with a minimum of two (2) complete sets of pads for all non-ALS air ambulances; One (1) sterile electrocardiogram;]
   4. A device for monitoring pulse oximetry and [instant glucose;]
  5. Thermometer;
   a. Personal protective equipment shall be available to each staff member responding on the aircraft, including:
   1. One (1) clean surgery gown or substitute, such as disposable covenals;
   2. Simple disposable face mask;
   3. Clear protective goggles or safety glasses;
   4. Disposable gloves;
   5. One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;
   6. One (1) particulate filter mask rated at N95 or better with an exhaust port for patient use;
   7. A means of cleaning the hands, such as disposable towelettes or other solutions;
   (f) Patient comfort items including;
   1. Two (2) clean blankets and sheets; and
   2. An emesis container or similar substitute; and
   (g) Miscellaneous supplies, including:
   1. Hand-held flashlight capable of providing adequate lighting to assess a scene or a patient away from the aircraft;
   2. One (1) sterile obstetrical kit;
   3. Instant glucose; and [Bite-stick; and
   4. An AED with a minimum of two (2) complete sets of pads for all non-ALS fixed-wing aircraft;
   (a) Splints, including:
      1. Lower extremity mechanical traction splint in adult and pediatric sizes and [Infant];
   2. Splints for arm, full leg, and foot including rigid, inflatable, or vacuum splints;
   (f) Immobilization devices, including:
      1. Adult-, and pediatric-long spine boards or other full body immobilization device with straps and cervical immobilization accessories;
      2. Five (5) rigid, stiff cervical collars in four (4) different sizes including pediatric sizes; and
   3. Towel rolls or other bulk dressings to be used for cervical immobilization for infants; and
   (g) One (1) five (5)-pound-size or larger, multipurpose fire extinguisher which meets FAA requirements for each specific aircraft and configuration.
   (2) All aircraft shall have a stretcher or litter with:
   (a) Head-raising capabilities;
   (b) An FAA approved aircraft-specific mechanism for securing the stretcher or litter in the aircraft during transit; and
   (c) An FAA approved aircraft-specific patient to stretcher securing mechanism.
   (3) Personal protective equipment shall be available to each staff member responding on the aircraft, including:
   (a) One (1) clean surgery gown or substitute, such as disposable covenals;
   (b) Simple disposable face mask;
   (c) Clear protective goggles or safety glasses;
   (d) Disposable gloves;
   (e) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;
   (f) One (1) particulate filter mask rated at N95 or better with an exhaust port for protection of crew members; and
   (g) A means of cleaning the hands, such as disposable towelettes or other solutions;
   (d) Cleaning materials shall be available, including:
      1. Hospital type disinfectants;
      2. Glass or multisurface cleaner;
      3. Tash bags for disposal of nonhazardous waste materials;
      4. Biohazard bags for the disposal of biohazard waste; and
      5. Puncture-resistant containers for disposal of sharp objects.
   (g) Patient comfort items including:
      1. Two (2) clean blankets and sheets;
      2. A disposable urinal;
      3. A disposable bed pan, and
      4. An emesis container or similar substitute;
   (h) Environment, terrain, and mission-specific rescue and survival supplies; and
   (i) Current expiration dates shall be required for any item that carries an expiration date.

Section 10. Advanced Life Support Equipment and Supplies.
(1) All ALS providers shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board.
(2) In addition to the BLS equipment required in Section 9 of this administrative regulation, an ALS provider shall carry on each aircraft and maintain in fully-functional order, supplies and equipment required by the providers' protocols, including as a minimum:
   (a) Endotracheal intubation equipment consisting of:
      1. Laryngoscope handle;
      2. Various laryngoscope blades in adult, pediatric, and infant sizes;
      3. Extra batteries and bulbs for handles or blades;
      4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;
      5. Equipment necessary to perform emergency cricothyroto my.
   (b) Alternative airway device to include at least one (1) of the following:
      a. LNA;
      b. Combitube;
      c. King Airway or
      d. Additional alternative airway device as approved by the service medical director;
   (c) An end tidal carbon dioxide detection device, Capnography device that provides continuous waveform and digital readout of end tidal CO2 and a disposable collictric device;
      (d) Stylettes in adult and pediatric sizes;
      (e) Magill forceps in adult and pediatric sizes;
      (f) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and
   (f) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
   (g) A portable monitor defibrillator that:
      1. Is capable of displaying a visual display of cardiac electrical activity;
      2. Is capable of providing a hard copy of cardiac electrical activity measure;
      3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;
      4. Is capable of providing external cardiac pacing;
      5. Has adult and pediatric external paddle electrodes or pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;
      6. Is capable of being operated from internal rechargeable batteries;
      7. Has synchronized counter-shock capability for cardioversion; and
      8. Has a patient monitoring cable with:
         a. Electrode paste or gel or equivalent;
         b. Electrode pads or equivalent for use with the patient moni-
toring cable; and
(c) One (1) additional roll of paper for hard copy printout;
(d) Pulse oximeter;
(e) Mechanical ventilation device;
(f) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers’ patient treatment protocols;
(g) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers’ patient treatment protocols;
(h) Restriction band appropriate for use with venipuncture procedure;
(i) Dextrostix or equivalent for the measurement of blood glucose levels;
(j) Disposable, individually-packaged antiseptic wipes;
(k) Intravenous fluids as required by the provider’s protocol, with macrodrip and microdrip fluid sets, extension sets and accessory items including over-the-needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;
(l) Intraosseous needles; and
(m) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.

(3) An ALS provider shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the aircraft. A provider that stores and utilizes controlled substances shall show proof of having submitted the provider’s protocols to the Cabinet for Health Services’ Drug Control Branch.

(5) This administrative regulation shall not prevent a provider from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board.

(6) Expiration dates shall be required for any item that carries an expiration date.

(7) Drugs and fluids maintained on the aircraft shall be stored based on manufacturer’s recommendations.

Section 11. Specialty Care Equipment. Nothing in this administrative regulation shall preclude the provider from maintaining other equipment specified by the medical director as may be needed for the transport of neonates or other special needs patients.

Section 12. Medical Directors. (1) All providers of air ambulance services shall have a medical director.

(2) Medical directors shall meet the requirements as set forth in 202 KAR 7:001.

Section 13[14]. Request for Waiver. (1) A provider licensed or contemplating licensure under this administrative regulation may make a written request to the board for certain provisions of this administrative regulation to be waived.

(2) A request shall justify that a proposed waiver, if approved, shall not jeopardize the quality of patient care or public safety.

(3) The board may approve a request based on at least one (1) of the following:

(a) Circumstances where public health and safety is a factor;
(b) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of adequate emergency medical services;
(c) Substitution of equipment authorized by this administrative regulation; or
(d) Testing of new procedures, techniques, or equipment in a pilot study authorized by the board.

(4) The board shall establish time limits and conditions on all waivers.

Section 14[13]. Exemptions from Regulations. (1) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(c);
(b) An aircraft serving as an ambulance during a disaster or major catastrophe; or
(c) An aircraft operated by the United States government on property owned by the United States government.

(2) In addition, the following out-of-state providers shall be exempt from the provisions of this administrative regulation:

(a) An aircraft licensed by another state that is transporting a patient from out of state to a Kentucky medical facility or another location in Kentucky;
(b) An aircraft licensed by another state that is transporting a patient from out of state through Kentucky to another location out of state;
(c) An aircraft licensed in an adjoining state that responds to a mutual aid request from a Kentucky licensed provider for emergency assistance if the out-of-state service is the closest service appropriately capable of responding to the request or if Kentucky licensed providers:

1. Are unavailable;
2. Have already responded; or
3. Are physically unable to reach the incident.

Section 15[14]. Public Notice of Negative Action. The board office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate, the name of any ambulance provider that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 16[14]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/96);
(b) Form EMS-6B, "Kentucky Emergency Medical Services Ambulance Run Report", (9/96);
(c) Kentucky Board of Emergency Medical Services Form No. 1, (9/96).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 300 N. Main Street, Versailles, Kentucky 40383, Monday through Friday, 8 a.m. to 4:30 p.m.

ROB ROTHENBURGER, Chairman
APPROVED BY AGENCY: July 7, 2006
FILED WITH LRC: July 9, 2006 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 26, 2008 at 10 a.m. at The Kentucky Community and Technical College System, Room 1025, 300 N. Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, August 19, 2008 five workdays prior to the hearing, of their intent to attend. If no notification of Intent to Attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 2, 2008. 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: Lee W. Rowland, Esq., Legal Counsel, Kentucky Board of Emergency Medical Services, 300 N. Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lee W. Rowland, Esq.
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes required equipment, standards and procedures for air ambulance providers licensed by the Kentucky Board of Emergency Medical Services.
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(b) The necessity of this administrative regulation: This regulation is necessary for conformity with the requirements of KRS 311A.030 to establish required equipment, standards and procedures for air ambulance providers licensed by the Kentucky Board of Emergency Medical Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.030 requires the establishment of required equipment, standards and procedures for air ambulance providers licensed by the Kentucky Board of Emergency Medical Services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes required equipment, standards and procedures for air ambulance providers licensed by the board.

(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 clarifies the confusing and conflicting language in the regulation that became effective in November, 2003.

(b) The necessity of the amendment to this administrative regulation: To clarify the confusing and conflicting language in the regulation that became effective in November, 2003.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.030 requires the establishment of required equipment, standards and procedures for air ambulance providers licensed by the Kentucky Board of Emergency Medical Services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes required equipment, standards and procedures for air ambulance providers licensed by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will only affect the requirements and procedures for the 12 air ambulance providers licensed in 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. This amendment will only affect the requirements and procedures for air ambulance providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)?: $200 for each of the 12 air ambulance providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The air ambulance providers will be certified and entitled to provide their services within the Commonwealth of Kentucky.

(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: none

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes requirements and procedures for air ambulance providers only.

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)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? N/A

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. N/A

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

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

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

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Expenditures (+/-): N/A

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.990(460.470, 150.990(5)]

STATUTORY AUTHORITY: KRS 150.025(460.025(4)]

150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(460.025(4)] authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. KRS 150.470 authorizes the department to promulgate creel and size limits for fish. EO 2008-516, effective June 16, 2008, recognizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation establishes fish size limits, daily catch limits, and field possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:

(a) Made of:

1. Wood;
2. Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and

(b) Not having attached:

1. An Insect;
2. A Minnow;
3. A Fish egg;
4. A Worm;
5. Com;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Chumming" means placing substances in the water[like materials upon which fish might eat in the water] for the purpose of attracting fish to a particular area, in order that they might be taken.

(3) "Cull" means to replace a live fish in the daily creel limit with another fish of the same species.
(4) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day (or have in possession) while fishing.
(5) "Daylight hours" are defined by KRS 150.010(6).
(6) "Kentucky bass" means the following with a patch of teeth on its tongue:
(a) Largemouth bass;
(b) Kentucky bass; or
(c) Coosa bass.
(7) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams unless otherwise stated in Section 4 of this administrative regulation.
(8) "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together.
(9) "Possession limit" means the maximum number of unprocessed fish a person may hold (in the field) after two (2) or more days of fishing. Unless otherwise stated in Section 4 of this administrative regulation, the maximum number shall be two (2) times the daily creel limit for each fish species with a daily creel limit.
(10) "Processed fish" means a fish that has been gutted and head removed.
(11)(49) "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closed at the end, and to which one or more hooks are attached.
(12)(49) "Release" means to return a fish:
(a) In the best possible physical condition;
(b) Immediately after removing the hook;
(c) To the water from which it was taken; and
(d) In a place where the fish's immediate escape shall not be prevented.
(13)(49) "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted.
(14)(49) "Single hook" means a hook with no more than one point.
(15)(49) "Size limit" means the minimum legal length of a fish.
(16)(49) "Slot limit" means that a person:
(a) Shall release fish within a specified minimum and maximum size; and
(b) May keep fish outside of the protected size range.
(17) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size, Creel, and Possession Limits. [Statewide Size, Creel, and Possession Limits. (1)] Except as established (specified) in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily and size limits, with the possession limit being two (2) times the daily limit (daily possession and size limits):
(a) Black bass: daily limit, six (6);[possession limit, twelve (12);]
1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.
2. Kentucky bass and Coosa bass: no size limit.
(b) Rock bass: daily limit, fifteen (15);[possession limit, thirty (30); no-size limit;]
(c) Saugeye, walleye, and their hybrids: daily limit, singly or in combination, six (6);[possession limit, twelve (12);] size limit, walleye and their hybrids, fifteen (15) inches; no size limit for saugeye.
(d) Muskellunge: daily limit, one (1);[possession limit, three (3);] size limit, thirty (30) inches.
(e) Chain pickerel: daily limit, five (5);[possession limit, ten (10);]
(f) White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15);[possession limit, thirty (30);] size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.
(g) Stippled bass daily limit, five (5); daily and possession limit, five (5); size limit, fifteen (15) inches.
(h) Crappie daily limit, thirty (30);[possession limit, sixty (60);]
(i) Rainbow trout and brown trout, singly or in combination: daily limit, eight (8); no more than three (3) of which shall be brown trout;[daily and possession limit, eight (8); no more than three (3) of which shall be brown trout;] no size limit on rainbow trout; twelve (12) inch size limit on brown trout.
(j) Redear sunfish: daily limit, twenty (20); [possession limit, forty (40);] no size limit.
(2) A person shall release grass carp caught from a lake owned or managed by the department.
(3) A person shall release lake sturgeon.
(4) Any person shall release fish:
(a) Below the minimum size limits established by this administrative regulation;
(b) Within a protected slot limit established by this administrative regulation; or
(c) Of a particular species, if a person possesses [has in his possession] the daily limit for that species established by this administrative regulation.
(5) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while fishing, on the shoreline, or while on the water.
(6) Any (4) A person shall not remove any part of the head or tail of a fish with (for which there is) a size or creel limit shall not be removed while fishing, on the shoreline, or while on the water until he has completed fishing for the day and has left the water.
(7) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:
(a) Obtain the fish from a licensed fish propagator or other legal source; and
(b) Retain a receipt or other written proof that the fish were legally acquired.
(8) All trout shall be released unless a person (6): A person shall release trout unless he:
(a) Has a valid trout permit;
(b) Is exempted from trout permit requirements by KRS 150.170(3); or
(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.
(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.
(2) Barkley Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20);[possession limit, forty (40);]
(c) Saugeye: size limit, fourteen (14) inches.
(3) Barron River Lake shall extend up [including] (a) Barron River to the Highway 100 bridge,
(b) Long Creek to the Highway 100 bridge;
(c) Beaver Creek to the Highway 1297 bridge;
(d) Skagg Creek to the Mathews Mill Road bridge; and
(e) Pater Creek to the Pater Creek Road bridge:
1. Crappie: size limit, nine (9) inches.
2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.
(4) Beaver Lake, Anderson County.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Channel catfish: size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad for bait.
(5) Bent Combs Lake, Clay County. A person shall not possess shad or use shad for bait.
(6) Beshears Lake, Caldwell County. Channel catfish: size
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limit, twelve (12) inches. (7) Boltz Lake, Grant County. (a) A person shall not possess shad or use shad for bait. (b) Channel catfish; size limit, twelve (12) inches. (8) Enggs Lake, Logan County. A person shall not possess shad or use shad for bait. (9) Buckhorn Lake. (a) Largemouth bass and smallmouth bass; size limit, fifteen (15) inches. (b) Muskellunge; size limit, forty (40) inches. (c) Crappie size limit, nine (9) inches. (10) Bullock Pen Lake, Grant County. Channel catfish; size limit, twelve (12) inches. (11) Cannico Lake, Nicholas County. Largemouth bass - large-mouth bass; size limit, fifteen (15) inches. (12) Carpenter Lake, Daviess County. A person shall not possess shad or use shad for bait. (13) Carr Creek Lake. (a) Largemouth bass and smallmouth bass; size limit, fifteen (15) inches. (b) Crappie; size limit, nine (9) inches. (14) Carter Caves State Park Lake, Carter County. (a) Fishing shall be during daylight hours only. (b) Largemouth bass: no size limit; daily limit, three (3) fish; possession limit, six (6) fish; size limit, fifteen (15) inches. (c) A person shall not possess shad or use shad for bait. (15) Cave Run Lake. (a) Largemouth bass; slot limit - a person may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches. (b) Smallmouth bass; size limit, eighteen (18) inches. (16) Cedar Creek Lake, Lincoln County. (a) Largemouth bass; size limit, twenty (20) inches; daily limit,[3]; possession limit, one (2); fish; possession limit, two (2) fish. (b) Channel catfish; size limit, twelve (12) inches. (c) A person shall not possess shad or use shad for bait. (17) Chimney Top Creek [Creek]. Wolfe County. Brown trout; size limit, sixteen (16) inches; daily limit, one (1); artificial bait only. (18) Corinth Lake, Grant County. (a) A person shall not possess shad or use shad for bait. (b) Channel catfish; size limit, twelve (12) inches. (19) Cumberland Lake shall extend up: (a) The Cumberland River to Cumberland Falls; (b) The Big South Fork to Devils Jump; (c) The Holstein River to the Harrods; and (d) The Laurel Fork to: 1. (e)-1. (a) Largemouth; size limit, fifteen (15) inches. 2. (b) Smallmouth; size limit, eighteen (18) inches.[shall be eighteen (18) inches]. 3. (e) Striped bass; size limit, twenty-four (24) inches; daily [and possession limit, two (2)];[e]. (f) Crappie; size limit, ten (10) inches. (20) Cumberland River downstream from Barkley Lake Dam. Sauger; size limit, fourteen (14) inches. (21) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries. (a) Brown trout: size limit [see a], twenty (20) inches; daily limit, one (1); live; size limit, none (0) [or, none];[e]. (b) Rainbow trout: slot limit - a person shall release fish between fifteen (15) and twenty (20) inches. Daily limit, none (0);[e]. (c) Trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and other tributaries upstream to the first riffle. (22) [Cyprinus carpio (cyprinidae) and Roberson Forest Wildlife Management Areas, Breathitt, Knott, and Perry Counties. On impounded waters of the area.

(e) Largemouth bass; size limit, fifteen (15) inches; daily limit three (3); possession limit, six (6). (f) Sunfish; daily limit, fifteen (15); possession limit, thirty (30). (g) Channel catfish; daily and possession limit, four (4). (h) A person shall not fish: 1. Except during daylight hours; or 2. On Starlight Lake between January 1 and May 31. (23) Dale Hollow Lake. (a) Smallmouth bass; slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limit shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long. (b) Walleye and its hybrids: daily limit, five (5); size limit, sixteen (16) inches. (c) Sauger; daily limit, ten (10); size limit, fourteen (14) inches. (d) Rainbow trout and lake trout.[] 1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout.[No size limit] 2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches. (e) Largemouth bass; size limit, fifteen (15) inches;[f] (f) Black bass; aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass. (g) Crappie; size limit, ten (10) inches; daily limit, fifteen (15). (h) Dowel Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches. (25) Essex [25] Dix River. (a) Largemouth bass; size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6). (b) Channel catfish; daily limit, four (4); possession limit, eight (8). (c) A person shall not possess shad or use shad for bait. (26) [26] Dog Fork, Wolfe County. A person shall: (a) Not fish except with an artificial bait with a single hook; and (b) Release brook trout. (27) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass; slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long. (28) Elmer Davis Lake, Owen County. (a) Largemouth bass; slot limit - a person shall release fish between twelve (12) and fifteen (15) inches. (b) Channel catfish; size limit, twelve (12) inches. (c) A person shall not possess shad or use shad for bait. (29) Fishtrap Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches. (30) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish; daily limit, five (5); size limit, fifteen (15) inches. (31) General Butler State Park Lake, Carroll County. (a) Largemouth bass; size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6). (b) Channel catfish; daily limit, four (4); possession limit, eight (8). (c) A person shall not possess shad or use shad for bait. (32) Grayson Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches. (33) Greenbo Lake, Greenup County. (a) A person shall not possess shad or use shad for bait. (b) Bluegill and sunfish; daily and possession limit, fifteen (15) fish. (34) Green River Lake. Crappie; size limit, nine (9) inches. (35) Guist Creek Lake, Shelby County. Channel catfish; size limit, twelve (12) inches. (36) Jentico Lake, Henry County. (a) Largemouth bass; size limit, fifteen (15) inches. (b) A person shall not possess shad or use shad for bait. (37) Kentucky Lake and the canal connecting Kentucky and Barkley lakes. (a) Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.
(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20); possession limit, forty (40).  
(c) Sauger: size limit, fourteen (14) inches.  
(39)(I)(ii) Lake Elythro, Christian County.  Largemouth bass: slot limit - a person may keep fish less than twelve (12) inches, or greater than fifteen (15) inches, and shall release fish between twelve (12) and fifteen (15) inches. 
(40)(I)(iii) Lake Malone, Muhlenberg and Logan County.  Largemouth bass: slot limit - a person may keep fish less than twelve (12) inches, or greater than fifteen (15) inches, and shall release fish between twelve (12) and fifteen (15) inches.  
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).  
(b) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(c) A person shall not possess shad or use shad for bait.  
(41)(I)(iv) Lake Pologhy, Grant County.  Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).  
(b) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(5) A person shall not possess shad or use shad for bait.  
(42)(II)(i) Lake Richland, Madison County.  Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit three (3).  
(b) A person shall not possess shad or use shad for bait.  
(43)(II)(ii) Lake Shelby, Shelby County.  Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).  
(b) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(6) A person shall not possess shad or use shad for bait.  
(44)(III)(i) Lake Laurel, Lake County.  Largemouth bass: size limit, fifteen (15) inches.  
(b) Smallmouth bass: size limit, shall be eighteen (18) inches; daily limit, two (2); possession limit, four (4).  
(c) Crappie: size limit, nine (9) inches; daily limit, fifteen (15) inches; possession limit, thirty (30) fish.  
(45)(III)(ii) Lake Lebanon, Marion County.  Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.  
(b) A person shall not possess shad or use shad for bait.  
(46)(III)(iii) Lake Elythro, Christian County.  Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).  
(c) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(7) A person shall not possess shad or use shad for bait.  
(47)(IV)(i) Lake Leary, Grant County.  A person shall not fish except during daylight hours.  
(b) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); size limit, fifteen (15) inches.  
(c) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(8) A person shall not possess shad or use shad for bait.  
(48)(IV)(ii) Lincol Homestead Lake, Washington County.  A person shall not fish except during daylight hours.  
(b) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); size limit, fifteen (15) inches.  
(c) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(9) A person shall not possess shad or use shad for bait.  
(49)(V)(i) Marion County Lake.  Largemouth bass: size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad for bait.  
(50)(V)(ii) McNary Lake, Jefferson County.  A person shall not possess shad or use shad for bait.  
(51)(V)(iii) Mill Creek Lake, Powell County.  Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6) fish.  
(b) A person shall not possess shad or use shad for bait.  
(52)(V)(iv) New Haven Optimist Lake, Nelson County.  Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6) fish.  
(b) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(c) A person shall not possess shad or use shad for bait.  
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.  
(b) Crappie: size limit, nine (9) inches.  
(54)(VI)(i) Ohio River.  (a) Walleye, sauger, and their hybrids: no size limit, daily limit, ten (10); fish, singly or in combination.  
(b) White bass, yellow bass, striped bass, and their hybrids: daily limit, thirty (30); no more than four (4) in the aggregate.  
(55)(VI)(ii) Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County.  Trout: size limit, sixteen (16) inches; daily limit, one (1) fish; artificial bait only.  
(56)(VI)(iii) Paintsville Lake.  (a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches; possession limit, eight (8).  
(b) Smallmouth bass: size limit, eighteen (18) inches.  
(57)(VII)(i) Parched Corn Creek, Wolfe County.  A person shall:  
(a) Not fish except with an artificial bait with a single hook; and  
(b) Release brook trout.  
(58)(VII)(ii) Ponder Yave, Christian County.  Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches; possession limit, twelve (12) inches; with protective velelektome.  
(59)(VII)(iii) Pikeville City Lake, Pike County.  Catch and release largemouth bass fishing (no harvest).  
(60)(VII)(iv) Poor Fork and its tributaries in Leitcher County downstream to the first crossing of Highway 932.  A person shall:  
(a) Not fish except with an artificial bait with a single hook; and  
(b) Release brook trout.  
(61)(VIII)(i) Rough River Lake.  A person shall:  
(a) Crappie: size limit, nine (9) inches.  
(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.  
(62)(VIII)(ii) Shanty Hollow Lake, Warren County.  A person shall:  
(a) Largemouth bass: size limit, fifteen (15) inches.  
(b) Channel catfish: size limit, twelve (12) inches.  
(c) A person shall not possess shad or use shad for bait.  
(63)(VIII)(iii) Shiloh Creek, Bell City, outside the Cumberland Gap National Park.  A person shall:  
(a) Not fish except with an artificial bait with a single hook; and  
(b) Release brook trout.  
(64)(VIII)(iv) Sportsman's Lakes, Franklin County.  A person shall not possess shad or use shad for bait.  
(65)(VIII)(v) Upper Sportsman's Lake.  
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3);  
(b) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(66)(VIII)(vi) Lower Sportsman's Lake.  
(a) A person thirteen (13) years or older shall not fish; and  
(b) Daily limit, three (3) fish of any species.  
(67)(IX)(i) Sprulington Lake, Taylor County.  A person shall not possess shad or use shad for bait.  
(69)(IX)(iii) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.  
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
(b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15); possession limit, thirty (30); size limit, nine (9) inches.  
(69)(IX)(iii) Taylorsville Lake WMA ponds, Spencer County (as designated).  
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).  
(b) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(70)(IX)(iv) Tennessee River downstream from Kentucky Lake.
Dam. Sauger: size limit, fourteen (14) inches.
(70)[(71)] Wood Creek Lake. Largemouth and smallmouth bass: size limit, fifteen (15) inches.
(71) Crappie: size limit, nine (9) inches.
(b) Largemouth and smallmouth bass—size limit, fifteen (15) inches.
(72) Yatesville Lake: Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a seasonal catch and release for trout season from October 1 - March 31.
(2) A person shall use artificial bait and release trout.
(3) The following streams shall be open to the seasonal catch and release for trout season:
(a) Bark Camp Creek in Whitley County;
(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
(c) Big Bone Creek within Big Bone Lick State Park in Boone County;
(d) Cane Creek in Laurel County;
(e) Casey Creek in Trigg County;
(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
(g) East Fork Collins River from Bee Creek upstream to Old Salem Road Bridge at Calloway County;
(h) East Fork of Indian Creek in Muhlenburg County;
(i) Elk Spring Creek in Wayne County;
(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
(k) Lick Creek in Simpson County;
(l) Middle Fork Red River in Natural Bridge State Park in Powell County;
(m) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;
(n) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.
(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:
(a) Size limits for selected species;
(b) Creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 8, 2008
FILED WITH LC: July 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 8 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 July 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Ken- lucky 40601, phone (502) 564-7109, ext. 4507, 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 size limits, daily limits, and possession limits for sport fish that may be taken from Kentucky waters.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations in order to regulate bag, creel, and possession limits of game and fish. KRS 150.470 states that no person shall take or have in possession in any one day more fish than the creel limit prescribed by regulation by the Department of Fish and Wildlife Resources.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KHS 150.025 and 150.470 by limiting the number and size of fish that may be taken from Kentucky waters. This will ensure that Kentucky's valuable sport fish populations are maintained at their highest possible levels.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will remove the 9-inch minimum size limit on crappie at Wood Creek Lake. The 15-inch minimum size limit on largemouth bass and 3 fish daily creel limit will also be removed at Carter Caves State Park Lake. The largemouth bass population will now be managed with no minimum size limit and the daily and possession limits will be the statewide limits. Sport fish harvest of lake sturgeon will be prohibited and the boundaries of Lake Cumberland will be clearly identified for anglers. Lastly, possession limits will be clarified for fish species that have daily creel limits.
(b) The necessity of the amendment to this administrative regulation: The removal of the 9-inch size limit on crappie at Wood Creek Lake is necessary because growth rates have decreased and few crappie grow to 9 inches. By removing the size limit, more crappie may be harvested by anglers which should result in increased growth of remaining crappie. The removal of the 15-inch minimum size limit is necessary because growth rates have also decreased. Harvest of smaller bass will improve growth rates. The prohibited sport fish harvest of lake sturgeon is necessary to re-establish this species in the upper Cumberland River through a stocking program. Clearly defined lake boundaries have been established for Lake Cumberland to facilitate compliance of more restrictive length limits on sport fish in the lake. Lastly, possession limits have been clarified as twice the daily creel limit and where they apply.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All anglers fishing for crappie at Wood Creek Lake, largemouth bass at Carter Caves State Park Lake, and Lake Cumberland will be affected by this amendment. Possession limits for fish have been clarified and all Kentucky anglers fishing throughout Kentucky will potentially be affected by this amendment. In 2006, there were an estimated 721,000 resident and nonresident anglers 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: Anglers fishing for crappie at Wood Creek Lake may now harvest any size of crappie, but must follow the statewide daily and possession limits. Anglers fishing for largemouth bass at Carter Caves State Park Lake may now harvest any size of largemouth bass, but must follow the statewide daily and possession limits. Anglers fishing in the upper Cumberland River may not harvest lake sturgeon. Anglers fishing Lake Cumberland within the expanded boundaries will have to comply with sport fishing regulations previously established for this lake. Lastly, possession limits have been clarified for anglers fishing Kentucky and processed fish. In a domicile will not be considered within an angler's possession limit.

(b) In complying with this administrative regulation or amendment (3): There will be no cost to the entities identified in question (3): Anglers will be able to harvest any size crappie at Wood Creek Lake, which will ultimately result in improved growth rates and potentially larger crappie in future years. In addition, anglers will be able to harvest any size largemouth bass at Carter Caves State Park Lake, which also will ultimately result in improved growth rates and potentially larger largemouth bass in future years. Anglers fishing Lake Cumberland will benefit by clearly being able to determine whether they are fishing the lake proper or the river above the lake. The lake sturgeon restoration effort will benefit anglers over time as this fishery will be re-established and, ultimately, anglers may have the potential to catch lake sturgeon in excess of 50-100 pounds.

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

(a) Initially: This administrative regulation change will result in no change in cost to the Kentucky Department of Fish and Wildlife Resources administrator.

(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: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are not included in these amendments.

(9) TIERING: Is tiering applied? Tierring was not applied because all anglers fishing in Kentucky were treated equal with these amendments.

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 of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to establish fishing guidelines to protect fish from being over harvested. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

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 direct revenue will be generated by this administrative regulation for state or local government; however, fishing has an annual economic impact of approximately $1.2 billion in Kentucky.

(c) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation in subsequent years.

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

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:082. Transportation and holding of exotic wildlife.

RELATES TO: KRS 150.010, 150.015, 150.025(4), 150.025(5)(4), 150.025(6), 150.025(7), 150.025(8), 150.025(9), 150.050, 150.220, 150.220

STATUTORY AUTHORITY: KRS 150.025(4), 150.180(6), 150.220

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.220 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. KRS 150.140(2) requires a person transporting live wildlife into Kentucky to obtain a permit from the department. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety. EO 2009-516, effective June 16, 2009, reorganizes and renames the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet.

Section 1. Definitions. (1) "Exotic wildlife" means terrestrial wildlife species which have never naturally existed in the wild in Kentucky including starring (Sturnus vulgaris), English or house sparrow (Passer domesticus), and Eurasian collared dove (Streptopelia decaocto).

(2) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals.

(3) "Permit" means an individual or annual transportation permit issued by the department.

Section 2. Exemptions. Transportation permits and captive wildlife permits shall not be required for the importation or possession of exotic wildlife and federally threatened or endangered species listed in this administrative regulation by facilities that are accredited by the American Zoo and Aquarium Association.

Section 3. Prohibited Species. (1) Except as specified in Section 2 of this administrative regulation and subsection (3) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

(a) Baya weaver (Ploceus philippinus)(Ploceus philippinus);

(b) Blackbirds (Genus Agalas), except native species.

(c) Cape sparrow (Passer melanurus);
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(d) Cowbirds (Genus Molothrus), except native species;
(e) Cuckoo (Family Cuculidae), except native species;
(f) Dick or red-billed[red-billed] quail (Coturnix quaila);
(g) European blackbird (Turdus merula);
(h) Fieldfare (Turdus pilaris);
(i) Flying fox or fruit bat (Genus Pteropus);
(j) Gambian giant pouched rat (Ctenomys gambianus);
(k) Giant, marine, or cane toad (Bufo marinus);
(l) Hawaiian rice bird or spotted munia (Lonchura punctulata
.

V. [punctulata neesii];
(m) Jack rabbit (Genus Lepus);
(n) Java sparrow (Padda australis);
(p) Madagascar weaver (Pseudotis madagascariensis);
(q) Mistle thrush (Turdus viscivorus);
(r) Monk or Quaker parakeet (Myiopsitta monachus);
(s) Multimammate rat (Subgenus Mastomys);
(t) Mute swan (Cygnus olor);
(u) Nutria (Myocastor coypus);
(v) Prairie dog (Cynomys spp.);
(w) Raccoon dog (Nyctereutes procyonoides);
(x) San Juan rabbit (Oryctolagus/Orzyolagus cuniculus);
(y) Sky lark (Alauda arvensis);
(z) Song thrush (Turdus philomelos);

(x) Sterlings (Family Sturnidae) including pink starlings or rosy

(y) Street (Sturnus roseus), except for Indian Hill mynahs (Gracula

(z) Stellaris (Family Sturnidae) including pink starlings or rosy

(aa) Sunset or slender-tailed meerkat (Genus Suricata);
(bb) Tongueless or African clawed frog (Xenopus/Aquapoe)[

(cc) Weaver finches (Genus Passer), except Passer domesticus;

(dd) White eyes (Genus Zosterops);
(ee) Wild European rabbit (also called the San Juan Rabbit)

(f) Yellowhammer (Emberiza citrinella);

(g) A member of the following families:

(1) Sulidae (pigs or hogs), except for domestic swine;

(2) Virevidae (Gulls, geetals, lingsangas, mongooses and fossi-

(3) Tabassaceae (pecarillae and javelinas).

(2) Prohibited inherently-dangerous wildlife. Except as specified

in Section 2 of this administrative regulation and subsections

(3), (4), (5) and (6) of this section, a person shall not import or

possess in Kentucky the following:

(a) Adders or vipers (Family Viperidae and Crotalidae) (except

(b) Adders or vipers (Family Viperidae) (except

(c) Buffalo (Syncerus caffer);

(d) Bears (Family Ursidae);

(e) Cheetah (Acinonyx jubatus);

(f) Clouded leopard (Neofelis nebulosa);

(g) Cobras mambas or coral snakes (Family Elapidae);

(h) Crocodiles (Family Crocodylia);

(i) Elephants (Family Elephantidae);

(j) Gavials (Family Gavialidae);

(k) Gila monsters or beaded lizards (Family Helodermatidae);

(l) Hippopotamus (Hippopotamus amphibius);

(m) Honey badger or ratel (Mellivora capensis)[carnivorous]

(n) Hyenas (Family Hyaenidae), all species except aardwolves

(Proteus cristatus);

(o) Lions, jaguars, leopards or tigers (Genus Panthera);

(p) Old world bager (Meles meles);

(q) Primates nonhuman (Order Primates);

(r) Rhinoceroses (Family Rhinocertidae);

(s) Sea snakes (Family Hydrophidae);

(t) Snow leopard (Uncia uncia);

(u) Venomous rear-tailed species (Family Colubridae) except

hgose snakes (Genus Heterodon);

(v) Wolverine (Gulo gulo); or

(w) Hybrids of all species contained in this list.

(3) Upon written request, the commissioner may authorize

the importation or possession of the species listed in this section

by [grants or for legitimate scientific or educational purposes by]

(a) A zoo or facility that is designated as the official zoo of a

municipality[.]

(b) A government agency;

(c) A college or university;

(d) A licensed or accredited educational or research institution;

(e) A lawfully operated circus; or

(f) An exhibitor sponsored or contract by a lawfully operated

state or county fair.

(4) A person may not temporarily transport or display a prohibited

animal listed in this section through the state for less than ninety-

six (96) hours if at all times the animal is maintained within a

confine sufficient to prevent the animal from escaping.

(5) Wildlife possessed or imported into Kentucky by per subsections

3 or 5 of this section shall be maintained within an enclo-

sure sufficient to prevent:

(a) Escape;

(b) Direct contact with the public; and

(c) Bodily injury to the public.

(5) A person may apply for a transportation permit to temporary-

ly transport or possess a prohibited animal listed in this section if

the animal is within the state for less than ninety-six (96) hours.

Transportation permits shall not be issued for consecutive ninety-

six (96) hour periods.

(6) [6] Possession of an inherently-dangerous animal prior to

the effective date of the amendment to this administrative

regulation.

(a) A person who legally possessed in Kentucky [possesses] an

inherently-dangerous animal as defined in subsection [2][2] of

this section prior to July 13, 2005 [the effective date of the amend-

ment to this administrative regulation] may continue to possess the

animal and the person shall maintain:

(1) Veterinary records;

(2) Acquisition papers for the animal; or

(3) Any other evidence[documents] that establishes that the

person possessed the animal in Kentucky prior to July 13, 2005
[the effective date of the amendment to this administrative

regulation].

(7) A legally-possessed inherently-dangerous animal shall not be

bored or replaced without the person who does not have] an

exemption as established in Sections 2 and 3(3) of this adminis-

trative regulation.

(a) A legally-possessed inherently-dangerous animal shall not be

bored or replaced by a person who does not have an exemption as

established in Sections 2 and 3(3) of this administrative regulation.

(b) If any inherently-dangerous animal escapes, either

intentionally or unintentionally, the owner of the animal shall imme-

diately contact local emergency services and the department at

800-252-3578 to report the escape or release.

Section 4. Exotic Wildlife. Unless listed in Section 3(1) of this

administrative regulation, or otherwise protected by state or federal

law, exotic wildlife shall not:

(1) Be classified as protected wildlife; and

(2) Require a permit from the department for possession.

Section 5. Transportation Permits and Certificate of Veterinary

Inspection. (1) Prior to entry into Kentucky, an annual or individual

transportation permit as established in §301 KAR 2:861 shall be

obtained for all shipments of wildlife. Persons shall be responsible

for applying for a transportation permit who:

(a) Receive a shipment of wildlife;

(b) Import wildlife for their own use or possession;

(c) Transport wildlife into and through the state to a destination

outside Kentucky;

(2) A copy of a valid transportation permit shall accompany all

shipments of wildlife into Kentucky.

(a) Individual transportation permits shall be valid for one (1)

shipment of wildlife and shall also permit possession of the wildlife

for the designated time period.

(b) Annual transportation permits shall be valid for multiple

wildlife shipments for one (1) year from the date of issue and shall

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also permit possession of the wildlife for the designated time period.

Annual transportation permit holders shall:
1. Notify the department in writing of any changes or additions subsequent to the original application so that an amended permit may be issued prior to subsequent wildlife importation; and
2. Notify the wildlife division department by telephone at 502-
656-3400 or 800-859-1549 Monday through Friday between 8 a.m.
and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife with [the date of expected shipment, course of the shipment, and the species being shipped;]
   a. The date of expected shipment;
   b. The source of the shipment;
   c. The species being shipped;
   d. The number of individuals of each species; and
   e. The period of time when the wildlife will be inside the state of Kentucky [the date of expected shipment, source of the shipment; and the species being shipped;]

(3) All shipments of wildlife, except for fish, amphibia, and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free from[all] symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinary inspection.

Section 6. The following animals shall not require permits from the department for importation:
1. Alpaca (Vicugna/Lama pacos),
2. American bison (Bison bison),
3. Breeds and varieties of goats derived from the wild goat or bezoar (Capra aegagrus);
4. Camels (Camelus bactrianus and Camelus dromedarius);
5. Chinchillas (Chinchilla laniger);
6. Cockatoos (family Cacatuidae);
7. Domesticated races of ducks and geese (family Anatidae) distinguishable morphologically from wild ducks or geese;
8. Domesticated races of the European rabbit (Oryctolagus cuniculus) distinguishable morphologically from wild rabbits;
9. Domesticated races of mink (Mustela vison), if:
   a. Adults are heavier than 1.15 kilograms; or
   b. The fur color can be distinguished from wild mink;
10. Domestic swine, except free-roaming or feral wild boars or wild swine;
11. Domesticated races of rats (Rattus norvegicus or Rattus rattus) or mice (Mus musculus);
12. Domesticated races of turkeys (Meleagris gallopavo) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;
13. Domestic yak (Bos grinnieni);
14. Gerbils (Meriones unguiculatus);
15. Guinea fowl (Numida/MusAcknowledgia);
16. Guinea pigs (Cavia porcellus);
17. Hamsters (Mesocricetus spp.);
18. Indian Hill mynah (Gracula/Graculida religiosa);
19. Llama (Lama glama);
20. Parrots, lovebirds, cockatiels, budgerigar, parakeets (except monk parakeet (M. monachus), macaws (family Psittacidae); (21 Peafowl (Pavo cristatus),
22. Pigeons (Columbia domestica or Columba livia) or domesticated races of pigeons;
23. Ratties, as defined by KRS 247.870; and
24. Toucans (family Ramphastidae).]

Section 7. Applying for Permits. (1) All applications for [transportation] permits shall be made on standard forms.
(2) The applicant shall indicate the source of supply of the wildlife.
(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.
(4) A permit holder shall show this written proof to a conservation officer upon request.
(5) Applicants shall possess an approved permit before transporting exotic wildlife into Kentucky [acquiring animals]

(6) Permit applications may be denied if the permit holder has been convicted of:
   a. Violations of any provision in this administrative regulation; or
   b. Another federal or state wildlife law regulating the holding or transportation of exotic wildlife.
(7) Failure to provide accurate, truthful and complete information on the application form shall result in:
   a. Immediate withdrawal or revocation of the permit; and
   b. Confiscation of the wildlife imported under the permit.
(8) An applicant shall be responsible for knowing and following local ordinances and rules regarding the wildlife to be held in a locality.

Section 8. Endangered Species. A permit may be issued for the transportation or possession of federally endangered or threatened species if:
1. It is not listed in Section 3 of this administrative regulation; and
2. Proof of lawful possession and acquisition is provided without obtaining prior approval from the commissioner. The commissioner may grant approval for legitimate educational or research purposes for:
   1. A zoo designated as the official zoo of a municipality;
   2. A government agency;
   3. A college or university; or
   4. A similar educational or research institution.

Section 9. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.
(2) All captive wildlife may be confiscated and the permit revoked if the permit holder violates any provision in this administrative regulation.

Section 10. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Annual Transportation Permit Application, June 2005-January 2006" edition; and
(b) Individual Transportation Permit Application, June 2005-January 2006 edition.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINNAM, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 15, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five (5) business days prior to the hearing of their intent to attend. If no notification of intent to attend this 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 September 2, 2008. 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) 584-7109, ext.

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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 restrictions on the possession and transportation of wildlife not indigenous to Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the indiscriminate possession and commercialization of wildlife, protect the public and native wildlife from wildlife-borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires any person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish the procedures for propagation and holding of protected wildlife.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025, 150.180, and 150.280 by defining the permits and procedures that are required for transportation and holding of exotic wildlife.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will allow state and county fairs to import exotic species while prohibiting direct contact between the public and exotic wildlife. This amendment will also allow the importation and possession of federally endangered and threatened species, with proof of lawful acquisition. In addition, this amendment establishes the department's ability to revoke or deny transportation permits to individuals convicted of violating provisions of this regulation and another federal or state law regarding the holding and transportation of exotic wildlife. Lastly, this amendment will correct species scientific and common names.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to strengthen the intent of the regulation and protect Kentucky's general public and wildlife resources from potentially harmful exotic species.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who transport or possess species listed as prohibited exotic wildlife will be affected by this amendment. There were approximately 108 transportation permits issued to individuals during 2007.
(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 who import and display exotic wildlife shall prevent direct contact between the public and their wildlife.
(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 individuals who transport or possess exotic wildlife.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): State and county fairs will benefit from this amendment by being able to import previously prohibited wildlife for display and attraction. In addition, safety of the public will result from prohibiting direct contact with inherently dangerous wildlife.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.
(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: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.
(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who transport or possess exotic wildlife are treated 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) which will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.
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 of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(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 by this administrative regulation during the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.
(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Tourism, Arts and Heritage Cabinet
Department of Fish and Wildlife Resources

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.180, 150.990
Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam which also counts as one (1) point.

(2) "Antlerless elk" means an elk without visible polishes antler protruding above the hairline.

(3) "Electronic decoy" means a motorized decoy powered by electricity, rechargeable batteries, or fuel.

(4) "Elk" means Cervus elaphus nelsoni.

(5) "Elk Hunting Unit" or "EHU" means a designated area within the elk restoration zone possessing specific elk management restrictions.

(6) "Elk Management Unit" or "EMU" means a designated area within the elk restoration zone possessing specific elk management restrictions during a post-season antlerless quota hunt.

(7) "Landowner cooperat" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for five (5) years.

(8) "Out-of-zone" means all counties not included in the restoration area.

(9) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCracken, Perry, Pike, and Whitley.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk causing property damage by department personnel, the property owner, or another designated person. A person authorized to destroy an elk causing damage shall not:

(a) Move the elk until he has attached a disposal permit provided by the department to the carcass; and

(b) Remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk hunting application period shall be December 1 to April 30.

(2) A person shall apply for the elk quota hunt via the department's Web site, the toll-free phone number listed in the current Kentucky Hunting and Trapping Guide, or a Kentucky license vendor. The applicant shall provide the following information:

(a) The applicant's name, Social Security number, date of birth, and mailing address or phone number; and

(b) A nonrefundable application fee.

(3) An applicant shall not apply more than once per application period.

(4) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(5) There shall be a random electronic drawing.

(6) Two (2) permits, one (1) antlered and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons.

(a) An applicant who has not reached his or her sixteenth birthday by the last day of the application period shall be entered into the special youth drawing. An applicant not drawn for the special youth permits shall automatically be entered into the regular drawing.

(b) The application period and fee for the special youth draw shall be the same as the elk quota hunt application period set forth in subsection (1) of this section (that for the regular elk hunt).

(c) A special youth hunt permit shall be valid for the assigned EHU during seasons specified in Section 6 of this administrative regulation.

(7) No more than ten (10) percent of all drawn applicants shall be nonresidents.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per each 5,000 acres for each year of the agreement to a landowner cooperator.

(2) Recipients of landowner cooperator permits shall comply with the seasons, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit is transferable, but shall be used only on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) The landowner cooperator or person who has received a landowner cooperator permit shall provide the following information to the department before the transferee shall hunt (shall provide the following information to the department about the transferee permit holder):

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall no longer be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing in Memorandum of Understanding.

(5) Recipients of landowner cooperator permits shall comply with the provisions of this administrative regulation.

Section 5. Hunter Requirements. (1) The statewide bag limit shall be one (1) elk per hunter per license year.

(2) A drawn applicant or a person who legally receives a landowner cooperator permit or a special commission permit issued pursuant to 301 KAR 3:100 may be accompanied by up to two (2) other individuals.

(3) A drawn applicant shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(4) An elk hunter or any person accompanying an elk hunter shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest pursuant to K 301 KAR 2:172.

(5) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except for leashed tracking dogs to recover wounded elk;

(c) Hunt over bait as defined in 301 KAR 3:010;

(d) Drive elk from outside the assigned EHU;

(e) Take swimming elk;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk from a vehicle or boat or while on horseback. A disabled hunter who has a [disabled] hunting method exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(6) An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.

(7) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person's firearm.

(8) An adult accompanying a person under (16) years old...
shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(3)[46] A hunter may use any firearm, archery equipment, or crossbow legal for hunting deer pursuant to 301 KAR 2.172, except an elk hunter shall not possess or use:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2.172-

(b) A modern firearm of less than 27 caliber;

(c) A muzzle-loading firearm of less than 50 caliber;

(d) A shotgun of less than 20 gauge;

(e) Any arrow without a broadhead point.

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than 0.270 inches (270 caliber) or greater, and when fired, the bullet shall produce at least 550 feet per second of energy at 100 yards.

Section 6. Elk quota Hunt: Seasons and Limits. (1) A hunter may use archery equipment:

(a) Beginning the first Saturday in October through the third Monday in January for antlered elk; and

(b) Beginning the second Saturday in October through the third Monday in January for antlerless elk.

(2) A hunter may use a modern firearm, muzzleloader, or crossbow:

(a) For seven (7) consecutive days beginning the first Saturday in October for antlered elk; and

(b) For fourteen (14) consecutive days beginning the second Saturday in December for antlerless elk.

(3) A hunter may use a crossbow for antlered or antlerless elk (either sex)

(a) From the second Saturday in October through the end of the third full weekend in October; and

(b) From the second Saturday in November through December 31.

(4) The statewide season bag limit shall be one (1) elk per hunter.

(a) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(b) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only/antlered-only or antlerless-only quota hunts.

Section 7. EHU boundaries. EHUs shall be designated as follows:

(1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast along the Tug Fork to the Pike County/Buchanan County, Virginia state line, then west along the Kentucky/Virginia state line to US Hwy 23. The boundary extends south along US Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east along the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on US Hwy 23, the boundary proceeds south to the intersection of US Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to US Hwy 23, completing the boundary.

(3) EHU 3 - Starting at the intersection of US Hwy 23 and State Hwy 80, the boundary proceeds south following US Hwy 23 to the intersection of US Hwy 23 and the Kentucky/Virginia state line. The boundary then follows US Hwy 119 west to the intersection of US Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and US Hwy 23, completing the boundary.

(4) EHU 4 - Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and US Hwy 119. The boundary then follows US Hwy 119 east to the intersection of US Hwy 119 and US Hwy 23. The boundary then follows US Hwy 23 south to the intersection of US Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia line southwest to the intersection of the state line with US Hwy 421. The boundary then follows US Hwy 421 north to the intersection of US Hwy 421 and State Hwy 66, then north along US Hwy 421 to the intersection of US Hwy 421 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(EHU 6 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with US Hwy 421. The boundary then proceeds south on US 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Warmer/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCracken County, McCravy/Watson County, McCravy/McCreary/Lawrence County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

Section 8. Postseason Quota Hunt for Antlerless Elk on Private Land.

(1) A modern firearms hunt for antlerless elk shall take place beginning on the fourth 4th Saturday in January for fourteen (14) consecutive days.

(2) Hunters shall be randomly drawn from the pool of applicants who were not drawn for the quota hunt immediately preceding the postseason hunt.

(3) Drawn applicants shall comply with the requirements in Section 5 of this administrative regulation except that applicants may hunt only in the EMU to which they are assigned or on land they own within another EMU.

(EHU's shall be designated as follows:

(a) Knott County EHUs. Starting at the intersection of State Hwy 2058 and 899 south of Pineville, the boundary then proceeds south along 899 to the intersection with State Hwy 150 near Brinkley, then south on State Hwy 160 to the intersection of State Hwy 160 and State Hwy 582 near Littcarr, then east on State Hwy 582 to the intersection of State Hwys 582 and 7. The boundary then proceeds north on State Hwy 7 to the intersection with State Hwy 899, then completing the boundary.

(b) Shelby Fork EMU. Starting at the intersection of State Hwy 2058 and US Hwy 421 near Helton, the boundary then proceeds south along US Hwy 421 to the intersection of US Hwy 421 and US Hwy 119 near Harlan, then west along US Hwy 119 to the intersection of US Hwy 119 and US Hwy 25E. The boundary then goes north following US Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Wab稀缺. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to US Hwy 421 at Helton, then completing the boundary.

Public hunting areas shall be closed to elk hunting during this season.

Section 9.0-[f] Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record the species, sex, date, and county of kill on a hunt-
er's log;
(2) [Attach the tag portion of the permit to the carcass before moving the carcass; and]
(3) Check the harvested elk by calling 800-245-4380 [the toll-free number listed in the current Kentucky Hunting and Trapping Guide] and recording the confirmation number on a hunter's log; and
(3) If hunting in the elk zone during the elk quota hunt, attach a department-issued tag to the carcass before moving it.

Section 10.18 Elk Hunting on Public Land. (1) A draw applicant or recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.
(2) Portions of Paintsville Lake WMA lie outside the restoration zone and are subject to the requirements established in Section 11.18 of this administrative regulation.
(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.
(a) Paul Van Booven WMA,
(b) The archery and crossbow seasons shall be open as set forth in Section 6 of this administrative regulation.
(b) Firearms shall not be used to hunt elk.

Section 11.19 Out-of-zone Elk Hunting. (1) The methods of taking and seasons established in 301 KAR 2:172 shall apply to taking elk outside of the restoration zone.
(a) In order to harvest an out-of-zone elk, a hunter shall be a legal deer hunter and shall possess an out of zone elk permit.
(b) Landowners are exempt from this permit requirement as per KRS 150.170.
(c) Either sex elk may be taken and shall not count towards the deer bag limit.
(d) Elk harvested out-of-zone shall be telechecked in accordance with Section 5.7 of this administrative regulation.

Section 12.10 A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit. Approved by the Fish and Wildlife Commission June 13, 2008.

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008 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 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 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 by September 2, 2008. 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 Sportsmen's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext 4507, 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 elk hunting requirements and legal methods to handle elk depredation problems.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the boundaries of the units to which hunters are assigned, to establish procedures for a post-season hunt, and to manage elk in the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.177 and 150.178 authorize the issuance of commission permits and landowner cooperators permits. KRS 150.390 authorizes the department to promulgate administrative regulations for the removal of elk that are causing destruction to property and to establish elk hunting seasons and requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The elk population continues to increase and requires additional harvest as the statute provides. This regulation establishes an additional hunt during the time of year when most damage occurs.
(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 lists the specific boundaries of the Elk Hunting Units (EHUs) for future assignment of hunters to zones and establishes a new post-season elk hunt in smaller Elk Management Units (EMUs).
(b) The necessity of the amendment to this administrative regulation: Given the population growth of the elk herd, a new structure and system is needed to manage the elk harvest. Therefore Elk Hunting Units (EHUs) have been established which shall be apportioned a percentage of elk hunting permits each season. The newly created post-season hunt allows hunters to take elk during the time of year when most damage occurs.
(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 30,000-35,000 people who apply to hunt elk in Kentucky each year, persons who own or lease land over 5,000 acres and who enter into an agreement with the Department for public hunting access, and property owners sustaining damage from elk.
(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: Persons drawn for the elk quota hunt must hunt within their assigned EHU as described in Section 7. Persons who are not drawn for the regular season quota hunt will be eligible to be drawn for the new post-season hunt. If drawn, hunters must purchase an annual hunting license (unless exempt) and an elk permit.
(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 affect any change in fee structure.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? They will have the opportunity to be drawn for the elk quota hunt or to take an elk during the post-season hunt.
(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 as amended.
(b) On a continuing basis: There will be no additional cost to the agency.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fish
and Game Funds. There will be no additional costs associated with the changes to this regulation. The department already has the mechanisms in place for administering quota hunt application procedures and random drawings.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists (see "6" above).

(8) State whether or not this administrative regulation established any fees directly or indirectly increased any fees: There are no new fees.

(9) TIERING: Is tiering applied? Tiering was not used because all persons wishing to harvest elk, mitigate property damage caused by elk, or participate in the landowner cooperat program 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 Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Land Management will be impacted by the amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.275, 150.177, 150.178, 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-): None; see 4 (a) and (b) above.

Expenditures (+/-): No additional expenditures; see 4 (c) and (d) above.

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:176. Deer control tags and destruction permits.

RELATES TO: KRS 150.010,[150.105], 150.170, 150.175, [150-344], 150.360, 150.390,[160-385], 150.990.

STATUTORY AUTHORITY: KRS 150.225, 150.105.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.105 allows the commissioner to authorize the destruction of wildlife that is causing damage. KRS 150.025 authorizes the department to promulgate administrative regulations for taking wildlife [regulating the taking of wildlife]. This administrative regulation establishes the procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction measures on a county-wide basis through regular hunting seasons. It also establishes the requirements and procedures for taking deer outside the statewide seasons. EO 2008-516, effective June 15, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Damage to wildlife habitat" means:

(a) The existence of a browse line caused by deer; or

(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.

(2) "Deer control tag" means a tag issued by the department which authorizes a hunter to take antlerless deer during an open deer season pursuant to 301 KAR 2:172.

(3) "Deer destruction permit" means written authorization from the department pursuant to KRS 150.105 to take deer outside the regular hunting season framework set forth in 301 KAR 2:172.

(4) "Deer food plot" means a crop or cultivated plants grown to attract and feed deer.

5. "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage.

6. "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat.

(2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season;

(b) According to the judgment of the department representative, regular season deer tags and tag limits as set forth in 301 KAR 2:172 are determined by a department representative to be inadequate to control deer populations on the property; and

(c) The landowner agrees to:

1. Follow the deer management practices recommended by the department representative, and

2. Supply the department with weight, age and condition data on any deer taken from the property.

Section 3. Applying for Deer Control Tags. (1) A landowner wishing to apply for deer control tags shall contact the department through:

(a) A conservation officer; or

(b) The appropriate district wildlife biologist for the county in which the property is located (or

(c) The Division of Wildlife in Frankfort.)

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment shall be made on or before
Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative.

(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if:
(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or
(b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner’s name.

(2) A landowner:
(a) May transfer a deer control tag to another person;
(b) Shall not issue more than (5) deer control tags to an individual; and
(c) Shall require hunters to sign a deer control tag at the time of transfer;

(d) Shall return unused tags to the department before January 31.

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the landholding for which it was issued.

(2) A deer control tag shall expire after the license year for which it was issued.

(3) A person using a deer control tag:
(a) Shall have in his possession:
1. A valid deer control tag [with his signature], and
2. A valid hunting license and the receipt or portion of a current deer permit, unless exempt from license or permit requirements pursuant to KRS 150.170;
(b) May use deer control tags during archery, crossbow, and gun muzzle-loader seasons to take antlerless deer; and
(c) Shall not take more than five (5) deer per license year with deer control tags; and
(d) Shall abide by the provisions of 301 KAR 2:172, except that
- Antlered deer shall not be taken; and
- Hunting of deer is prohibited during processing or disposal of the tag.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit:
(a) To a person authorized by the commissioner to remove a deer that is or may become a public safety or environmental threat; or
(b) To a landowner:
1. Who continues to experience damage after being issued deer control tags; or
2. Whose property cannot be hunted legally and deer are posing a public safety or environmental threat;
(c) To a captive cervid facility permit holder or applicant:
1. Whose fence meets the fencing and holding requirements in 301 KAR 2:083; and
2. Who has attempted to remove wild deer using nonlethal methods or statewide seasons as set forth in 301 KAR 2:172.

Section 8. Denial, Revocation, or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may revoke a deer control tag or destruction permit and deny a future tag or permit to a person who:
(a) Fails to comply with the requirements of this administrative regulation;
(b) Is convicted of a violation of 301 KAR 2:083, 2:172, or 2:178.
(c) An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B, [dear administrative regulation violation; or
(d) Otherwise abuses the Deer Control-Tag Program.

(2) An appeal of a revocation or denial of eligibility shall be:
(a) Made in writing to the commissioner; and
(b) Within sixty (60) days of the date of the revocation or denial.

(3) An appeal of the commissioner’s decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner’s decision.

(4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, 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 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 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 by September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Rosa Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rosa Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does; this administrative regulation establishes the requirements for control and removal of deer causing property damage, posing a public safety threat, or trapped inside an enclosure intended to become a captive cervid
(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow for increased harvest during the season in localized areas and for out-of-season removal of deer that were necessary to remove wildlife causing property damage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations governing taking wildlife. KRS 150.105 allows landowners to remove wildlife causing property damage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists administration of KRS 150.025 by delineation of the timing and methods of taking above the statewide bag limit for deer and outside regular hunting seasons. It assists administration of KRS 150.105 by outlining the manner in which deer may be destroyed or controlled to alleviate damage or threats to safety.

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

(a) How the amendment will change this existing administrative regulation: The amendment deletes the requirement to return unused control tags and allows destruction permits to be issued for the removal of wild deer trapped in an enclosure such as a captive cervid facility if other removal methods fail or are impractical.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to eliminate the requirement that unused control tags be returned to the department and to create a procedure to allow captive facilities to remove wild deer in a timely fashion.

(c) How the amendment conforms to the content of the authorizing statutes: See (1) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone experiencing agricultural damage due to deer will be affected by this regulation. Approximately 1,000 people request control or destruction tags each year. New and expanding captive cervid facilities will also be affected by the added provision for use of destruction permits for wild deer trapped inside an enclosure. Since the department began issuing new captive cervid facility permits in November 2006, 17 new facilities have been constructed.

(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) have to take to comply with this administrative regulation or amendment: Landowners issued deer control tags will no longer have to return unused tags. Applicants for new or expanded captive cervid facilities must attempt non-lethal and/or regular season harvest to remove trapped deer and may request destruction permits if necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The removal of the requirement to return unused tags imposes no cost to landowners. For captive cervid facilities, the cost will vary depending upon the effort required to remove wild deer from an enclosure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Landowners will no longer have to arrange to return or mail unused control tags to the department. KRS 150.730 requires that all wild cervids be removed from a new or expanded facility before a permit can be issued for operation; this amendment liberalizes the methods for captive cervid permit applicants to remove wild deer before or after statewide seasons.

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

(a) Initially: This administrative regulation amendment will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(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 implement-

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 Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that authorizes or authorizes the action taken by the administrative regulation: KRS 150.025 and 150.105

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? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-): None; see (a) and (b) above.
Expenditures (+/-): No additional expenditures; see (c) and (d) above.

Other Explanation:

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources

(Amendment)

301 KAR 2:300. Black bears.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.105, 150.175, 150.180, 150.300, 150.305, 150.340, 150.380, 150.370, 150.395, 150.990, 150.025, 150.390, 150.092

STORATUTORY AUTHORITY: KRS 150.025, 150.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 and 150.390 authorize[authorizes] the department to promulgate administrative regulations governing hunting seasons, bag limits, methods of taking and other matters necessary to carry out the [purposes] of KRS Chapter 150, [including the management and conservation of wildlife]. This administrative regulation establishes the hunting season, prescribes legal methods of taking, and establishes harvest reporting requirements for black bear hunt-
ing [the prohibitions regarding the feeding of black bears and pursuing black bears with dogs in the Commonwealth] 806-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1 Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.
(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.
(3) "Arrow" means the projectile fired from a bow or crossbow.
(4) "Baited area" means an area where feed, grains, or other substances capable of attracting black bears have been placed.
(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.
(6) "Bear zone" means the following Kentucky counties: Harlan, Letcher, and Pike.
(7) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.
(8) "Gear" means the species Ursus americanus.
(9) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.
(10) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.
(11) "License year" means the period from March 1 through the following February.
(12) "Modern gun" means a rifle, handgun, or shotgun which is loaded from the rear of the barrel.
(13) "Muzzle-loading gun" means a rifle, shotgun, or handgun which is loaded from the chamber and discharges from the barrel after ignition of the primer.
(14) "Shotshell" means ammunition discharged from a shotgun.
(15) "Bear permit" means a permit which, in conjunction with appropriate licenses, seasons and methods, allows the holder to take one (1) either-sex bear.
(16) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding and Pursuing Black Bears. A person shall not:
(1) Engage in any direct or indirect feeding of black bears; or
(2) Pursue or chase black bears with dogs.

Section 3. License and Bear Permit Requirements. (1) Bear permits may only be purchased by residents of Kentucky and nonresidents. Unless exempted by KRS 150.170, a person hunting bear shall have a valid Kentucky hunting license and valid bear permit while hunting.

Section 4. Bear Damage Control. The department may authorize the disposal of bear carcasses and may authorize the use of a permit by a person to remove a bear causing property damage. A person authorized to destroy a bear causing damage shall:
(1) Move the bear without attaching a disposal permit provided by the department to the carcass; and
(2) Remove the disposal permit until the carcass is processed.

Section 5. Hunter Restrictions. (1) A bear hunter:
(a) Shall not harvest bear except during daylight hours;
(b) Shall not use dogs, except leashed hounds, that may be used to recover wounded bears;
(c) Shall not hunt bear on a baited area;
1. While bait is present; or
2. For thirty (30) days after the bait has been removed;
(d) Shall not harvest female bears with cubs or bears less than seventy-five (75) pounds in weight;
(e) Shall not hunt black bears at night;
(f) Shall not shoot bears from a vehicle, boat, or while on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.
(2) An adult shall accompany and maintain control of a youth hunting bear with a firearm.

Section 6. Weapon Restrictions. (1) A bear hunter shall not use or possess while bear hunting:
(a) A device capable of taking a bear except a firearm, crossbow, or archery equipment;
(b) A modern firearm less than 270 caliber;
(c) A muzzle-loading firearm less than 50 caliber;
(d) A shotgun less than 20 gauge;
(e) A .22 caliber firearm;
(f) A fully automatic weapon;
(g) A firearm with a magazine capacity greater than ten (10) rounds;
(h) A steel-jacketed ammunition;
(i) Tracer bullet ammunition;
(j) A shot containing more than one (1) projectile;
(k) A .30 caliber or larger firearm;
(l) A crossbow without a working safety device;
(m) A chemically treated arrow;
(n) An arrow with a mechanical attachment.
(2) A handgun used to hunt bear must have a barrel length of at least six (6) inches, have a bore diameter of at least 0.320 inches, and when fired, the bullet must produce at least 550 ft/lbs of energy at 100 yards.

Section 7. Hunter Orange Clothing Requirements. Notwithstanding any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest.

(2) Requirements in this section shall not apply to a person:
(a) Hunting waterfowl;
(b) Hunting furbearers at night during a legal furbear season;
(c) The hunter orange portions of a garment worn to fulfill the requirements of this section;
(d) May display a small section of another color; and
(e) Shall not have mesh weave openings exceeding one-fourth (1/4) inch in any measurement.

Section 8. Bear Zone Season Dates and Bag Limits. (1) A person shall only harvest bears in the Bear Zone.
(2) A hunter may take bear using weapons described in Section 3 of this administrative regulation for two (2) consecutive days beginning the third Saturday in December.
(3) A person shall not take more than one (1) bear in a license year.

Section 9. Bear Quota and Season Closure. (1) The bear season shall close on the day when the quota of:
(a) Ten (10) bears have been harvested; or
(b) Five (5) female bears have been harvested.
(2) All bear hunters must call 1-800-558-1949 after 9 p.m., each day of the legal bear season to determine if the annual quota has been reached.

Section 10. Bear Sanctuaries. (1) Hensley-Pine Mountain Wildlife Management Area shall be closed to bear hunting and
(2) The area surrounding Hensley-Pine Mountain Wildlife Management Area shall be closed to bear hunting starting at the intersection of Sand Hill Bottom Road and North US HWY 119 in Cumberland, the boundary proceeds northeast along North US HWY 119 to the intersection of US HWY 119 and Kentucky HWY 2035. The boundary then proceeds west along Kentucky HWY 2035 to the intersection of Kentucky HWY 2035 and Kentucky HWY 931. The boundary continues southwest along Kentucky HWY 931 to the intersection of Kentucky HWY 931 and Kentucky HWY 160, then proceeds southwest along Kentucky HWY 160 to the intersection of Kentucky HWY 160 and Kentucky HWY 483 in Gordon. The boundary then proceeds south and east along Kentucky HWY 160 to the intersection of Kentucky HWY 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US HWY 119, completing the boundary.
Section 11. Harvest Recording and Check-in Requirements. Immediately after taking a bear, a person shall:
  (1) Record in writing the:
      (a) Species taken;
      (b) The date taken;
      (c) The county where taken; and
      (d) Sex of the bear before moving the carcass from the site where taken.
  (2) This information shall be recorded on a hunter’s log.
  (3) Retain the completed hunter’s log in possession whenever the hunter is in the field during the current season.
  (4) Successful hunters shall register harvested bears at a department-operated check-in station immediately after leaving the field. Before leaving the check-in station, successful bear hunters shall telecheck their bear by calling 1-800-245-4263 and record the confirmation number on a hunter’s log.
  (4) After registering a bear, hunters shall attach to the carcass a tag issued by the department.

BENJY KINMAN, (Acting) Deputy Commissioner,
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportman’s Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by September 2, 2008. 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 Sportman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, 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 black bear hunting seasons, prescribes legal methods of taking, and establishes legal methods of tagging and checking requirements for black bear hunting in Kentucky.
  (b) The necessity of this administrative regulation: This administrative regulation insures the permanent and continued supply of black bears by protecting them from overharvest.
  (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing taking of wildlife. KRS 150.390 authorizes the department to promulgate administrative regulations that restrict the taking of black bears.
  (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by delineation of the hunting, methods of take, and harvest restrictions for the taking of black bears. It assists administration of KRS 150.390 by further restricting the methods of take for black bears.
  (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
     (a) How the amendments will change this existing administrative regulation: This amendment delineates a black bear hunting zone, dictates harvest restrictions for black bears, and creates a black bear quota hunt.
     (b) The necessity of this amendment to this administrative regulation: This amendment is necessary to establish the restrictions of a newly implemented black bear hunting season in Kentucky.
  (c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
  (d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
  (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters in Kentucky will be affected by this regulation since it will provide the opportunity to take black bears. In 2007, there were 87,516 resident hunting licenses sold 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: Kentucky residents wishing to hunt black bears will be required to purchase a bear hunting permit.
    (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a resident bear hunting permit shall be thirty dollars ($30.00).
    (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will be provided the opportunity to hunt black bears and the black bear hunting season has been previously established in Kentucky.
  (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
    (a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.
    (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: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.
  (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly create a fee; however, 301 KAR 3.022 will be amended to create a bear permit ($30) for the first black bear hunting season in 2009.
  (9) TIERING: Is tiering applied? Tiering was not applied because all hunters wishing to pursue bears will be treated equally and must follow the same regulatory guidelines.

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 of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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, 150.390.
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 fiscal year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue generated by this administrative regulation for the first year cannot be estimated.
Section 1. Definitions. (1) "Agent of the state" means a state that will be granted only to other Kentucky government agencies or any individuals conducting work on projects conducted on behalf of the department.

(2) "Educational wildlife collecting" means the taking and subsequent possession or release of protected wildlife by an individual or nonprofit organization for use in the bona fide instruction of students or for a university-related research project.

(3)(a) "Federally-protected species" means any wildlife species listed by the United States Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

(b) "Protected wildlife" is defined by KRS 150.010.

(4)(a) "Scientific wildlife collecting" means the taking and subsequent possession or release of protected wildlife specimens for the purposes of conducting scientific investigations or evaluations for which remuneration is received.

(b) "Watershed" means an 8-digit Hydrologic Unit Code (HUC) as defined by the United States Geological Survey.

Section 2. Permit Required. (1) A permit shall be required by all persons, except an employee of the department engaged in his or her official duties, involved in scientific or educational collecting of any protected wildlife in the state of Kentucky, except an employee of the department engaged in his or her official duties.

(2) Federally-protected wildlife shall not be collected unless the collector holds a Scientific or Educational Collecting Permit from the department and a valid federal permit or a letter designating him or her as an agent of the state department.

(3) A Scientific or Educational Collecting Permit shall not be used in lieu of a hunting, fishing, or trapping license.

Section 3. Federally-protected species. (1) An application for a Scientific or Educational Collecting Permit for all federally-protected species and fishes within a watershed known to harbor federally threatened or endangered fish species shall be accompanied by a project proposal stating the specific goals and locations of the collecting activities.

(2) A person who applies for a Scientific or Educational Collecting Permit for bats, mussels, copperbelly watersnakes or federally protected species shall submit a written affidavit stating he or she possesses the ability to identify federally protected species in the field.

(3) A person who applies for a Scientific or Educational Collecting Permit for fishes that wishes to collect in a watershed known to harbor federally threatened or endangered fish species, or is specifically sampling for those species, shall submit a written affidavit stating he or she possesses the ability to identify federally-protected fish species in the field.

(4) Federally-threatened or endangered species shall not be killed intentionally. Federally threatened or endangered species inadvertently killed shall be reported to the Kentucky Department of Fish and Wildlife Resources Wildlife Diversity Program at 1800-555-1234 or via e-mail sunni.carr@ky.gov within twenty-four (24) hours of death and all specimens submitted to the department within seven (7) days of taking.

(5) A department-approved, qualified person as listed on the Scientific or Educational Collecting Permit shall be present at all collection activities involving:

(a) Bats;

(b) Mussels;

(c) Fishes within watersheds known to harbor federally protected fishes;

(d) Federally-protected species.

(6) For collection activities involving federally threatened or endangered species, the Scientific or Educational Collecting Permit holder shall:

(a) Hold a valid federal permit or a letter designating him or her as an agent of the state department;

(b) Notify the Wildlife Diversity Program Coordinator weekdays between 8 a.m. and 4:30 p.m. at (800) 856-1549 or via email sunni.carr@ky.gov (and local wildlife and boating officer) at least fifteen (15) days in advance of collection activities.

Section 4. Issuance of Permits, Possession Requirements, and Revocation. (1) Issuance of permits. A permit may be issued upon receipt of:

(a) A completed application;

(b) A Scientific and Educational Collecting Permit Qualification Form for each person listed on the application;

(c) Supporting materials as required in Section 3 of this administrative regulation;

(d) Remittance of the correct fee as listed in 301 KAR 3.022.

(2) A permit is valid from January 1 through December 31 of the same year.

(3) Possession requirements. At least one (1) person in a field party shall carry a valid Scientific or Educational Collecting Permit or photocopy of the same. Each person collecting protected wildlife shall be listed on the Scientific or Educational Collecting Permit.

(4) Suspension. A scientific or educational collecting permit may be suspended while infractions are investigated or pending results of court proceedings or litigation.

(5)(a) Revocation. If a Scientific or Educational Collecting Permit shall be revoked without refund if the permittee is found in violation of any federal or state law or regulation involving the collection of protected wildlife as listed in this administrative regulation, a violation of a Federal fish-and-wildlife law, a Kentucky fish-and-wildlife law, or KRS Chapter 150, KAR Title 301, or another state's fish and wildlife law.

(b) Scientific or educational collecting permits shall be revoked without refund if the permittee fails to comply with any application document.

(c) A person whose permit has been revoked shall be ineligible to apply for another Scientific or Educational Collecting Permit.
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Section 5. Reporting Requirements. (1) Invertebrates. The following list of invertebrates shall be reported per the specifications outlined in subsection (2) of this section:
   a. Mussels (Class Bivalvia);
   b. Crayfish (Order Decapoda); and
   c. Federally threatened or endangered invertebrates.

(2) Scientific Collecting Permit. (a) Data shall be submitted annually and prior to renewal of new permits.
   (b) Data shall be in a format specified by the department.
   (c) Required data shall include:
      1. Scientific name (Genus and species) of each species recorded/collected;
      2. Site location including:
         a. County; and
         b. 7.5-minute USGS topographic quadrangle name;
      3. Longitude and latitude in degrees/minutes/seconds format
         North American Datum 1983 of each species occurrence/collection;
      4. Date of occurrence/collection;
      5. Number of individuals recorded/collected for each species;
      6. Observers for each record; and
      7. Disposition of the specimen.

(3) Educational Collecting Permit. (a) University-related research projects. Data shall be submitted per the specifications outlined in subsection (1)(a) of this section.
   (b) With the exception outlined in subsection (2)(a) of this section, no data reporting requirements shall exist for Educational Collecting Permit holders.

Section 6. Disposition of Collected Wildlife. All captured protected wildlife not killed shall be released at the capture location.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) Scientific and Educational Collecting Permit Application, edition 2008/2003;
   (b) Scientific and Educational Collecting Permit Qualifications Form, edition 2003; and
   (c) Map of 8-digit USGS HUC of Kentucky, edition August 2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m.

BENJY KINMAN, (Acting) Deputy Commissioner, for
DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
   CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7105, ext. 4507, 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 the procedures for applying for a Scientific and Educational Collecting Permit, procedures for collecting wildlife, and procedures for reporting collected wildlife.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure oversight of collection activities for zoological, educational or scientific purposes of wildlife in Kentucky.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.185 authorizes the department to regulate or restrict methods of take, places where take can be permitted, and make administrative regulations that apply to a limited area or the entire state. KRS 150.183 authorizes the department to promulgate regulations regarding the possession of any species of wildlife for zoological, educational or scientific purposes. This administrative regulation establishes the procedures for applying for a Scientific and Educational Collecting Permit, procedures for collecting wildlife, and procedures for reporting collected wildlife.

(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 who may be granted “Agent of the State” designation, add “suspension” as a penalty option, require individuals who collect protected species to notify the department fifteen (15) days before collection activities and reduce the penalty for revocation from three (3) years to one (1) year before an individual can reapply for a new Scientific and Educational Collecting Permit.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify who is eligible for “agent of the state” status and to provide a suspension option when potential permit infractions are being investigated.
   (c) How the amendment conforms to the content of the authorizing statutes: See (1)(a) above.
   (d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who hold a Scientific and Educational Collecting Permit will be affected by this amendment. During 2007, a total of 149 permits were issued: 85 educational permits to individuals, 18 to government agencies and 45 scientific wildlife collecting permits to individuals/businesses.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals will have to first obtain a Federal Fish and Wildlife Permit to collect federally listed native Endangered and Threatened Species and then obtain a state scientific collection permit in order to comply with this amendment.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new cost to individuals who collect species that are not federally protected to comply with this amend-
ment. For those individuals requesting a Federal Fish and Wildlife Permit, it will cost $100.00 for the federal permit; however, state Scientific collection permit rates will remain the same.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who collect federally protected species will have the security of possessing a federal Fish and Wildlife Permit which would allow them to be eligible for obtaining a state permit in other states to handle federally protected wildlife. The fifteen (15) day advance notification will provide department staff sufficient time to review the collection methodologies for federally protected species.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(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: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No new state fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals required to obtain a scientific or educational permit were treated 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 Department of Fish and Wildlife Resources Division of Wildlife, Fisheries and Law Enforcement 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 150.005 authorizes the department to regulate or restrict methods of take, places where take can be permitted and make administrative regulations that apply to a limited area or the entire state. KRS 150.183 authorizes the department to promulgate regulations concerning the possession of any species of wildlife for zoological, educational, or scientific purposes. KRS 150.275 grants the commissioner the authority to issue scientific or educational permits. The Endangered Species Act of 1973, Section 10(a) states the requirements for individuals to obtain a federal permit to handle federally threatened or endangered species.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water (Amendment)

401 KAR 5:010. Operation [Certification] of wastewater systems by certified operators [system operators].

RELATES TO: KTS 224.10-100, 224.10-110, 224.70-100, 224.70-110 (224.70-440).

STATUTORY AUTHORITY: KRS [224.04-110,] 224.10-100, 224.10-110, 224.73-110.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Energy and Environment Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.73-110 requires that a person shall not have primary responsibility for the operation of a sewage system or a portion of a system, whether publicly or privately owned, unless the operator has passed an examination prescribed by the cabinet. This administrative regulation requires wastewater systems to be operated by an appropriately certified operator. The secretary is directed to adopt administrative regulations applicable to certification of wastewater system operators, establishes standards for classification of wastewater systems, qualifications of applicants, examination procedures, duties of the Kentucky Board of Certification of Wastewater System Operators, provisions relating to the issuance and renewal of certificates, disciplinary actions, a fee schedule and other provisions necessary for certification of operators.

Section 1. Certified Operators for Wastewater Treatment Plants. A wastewater treatment plant that accepts wastewater containing domestic sewage shall be operated by a certified operator as follows:

1) A treatment plant with a design capacity of less than or equal to 50,000 gallons per day shall be operated by a certified operator holding an active Class I, II, III, or IV treatment certificate;

2) A treatment plant with a design capacity of more than 50,000 gallons per day, but less than or equal to two (2) million gallons per day shall be operated by a certified operator holding an active Class II, III, or IV treatment certificate;

3) A treatment plant with a design capacity of more than two (2) million gallons per day, but less than or equal to seven (7) million gallons per day shall be operated by a certified operator holding an active Class III or IV treatment certificate;

4) A treatment plant with a design capacity in excess of seven (7) million gallons per day shall be operated by a certified operator holding an active Class IV treatment certificate.

5) A wastewater treatment plant at a school shall be operated by a certified operator holding an active limited limited certificate or a Class I, II, III, or IV treatment certificate.

Section 2. Certified Operators for Collection Systems. Effective January 1, 2010, each collection system transporting wastewater containing domestic sewage shall be operated by a certified operator as follows: (1) Collection systems with greater than 5,000 linear feet of sewer line and with a population served of 1,500 individuals or less shall be operated by a certified operator holding an active Class I, II, III, or IV collection certificate;

2) Collection systems with a population served of 1,501 to 15,000 individuals shall be operated by a certified operator holding an active Class II, III, or IV collection certificate;

3) Collection systems with a population served of 15,001 to 50,000 individuals shall be operated by a certified operator holding...
an active Class III or IV collection certificate;

(4) Collection systems with a population served of 50,001 individuals or greater shall be operated by a certified operator holding an active Class IV collection certificate; or

(5) A wastewater collection system at a school is not required to be operated by an operator holding an active collection certificate.

Section 3. Certified Operator Availability. The facility shall ensure that a certified operator shall be able to be contacted by phone within thirty (30) minutes and shall be capable of being on site within two (2) hours.

Section 4. Certificate Display. If a wastewater system office is available at the wastewater treatment plant or within the sewer service area, the operator's certificate shall be prominently displayed on the wall. [Definitions: The following terms shall have the meanings set forth below unless the context clearly indicates otherwise:

(1) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(2) "Board" means the Kentucky Board of Certification of Wastewater System Operators.

(3) "Certificate" means the meaning given it in KRS 224.01-010.

(4) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the holder has met the requirements specified for the professional operator classification set by the administrative regulation.

(5) "Certified operator" means a wastewater system operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of this administrative regulation.

(6) "Division" means the Division of Water.

(7) "Operator" means any person involved in the operation of a wastewater system.

(8) "Primary responsibility" means having the authority to conduct the procedures and practices necessary to insure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws and administrative regulations of the Commonwealth, or to supervise others in conducting those practices.

(9) "Secretary" has the meaning given it in KRS 224.01-010.

(10) "Wastewater system" means sewage system as defined in KRS 224.01-010.

Section 2. General Provisions. (1) Each wastewater system shall be operated under the supervision of an individual holding a Kentucky operator's certificate for at least the class of system supervised.

(2) If the certified operator is not physically present while a system is operating, the certified operator shall be reasonably available. Availability shall be determined by the board and cabinet.

(3) Facility whose classification changed from Class II to Class I as a result of revision in Section 8 of this administrative regulation as effect on the effective date of this administrative regulation shall employ a certified Class II or higher operator by January 1, 1994.

(4) Certificate display. If a wastewater system office is available at the wastewater treatment plant or within the sewer service area, the operator's certificate shall be prominently displayed on the wall.

(5) Wallet card. Certified operators shall carry the cabinet-issued wallet card showing current certification status while on duty.

Section 3. Duties of the Board. In carrying out its responsibilities and with consideration given to the minimum standards and guidelines of the ABC, the board may:

(1) Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve substitutions for education and experience requirements;

(3) Review and provide comments to the cabinet on proposed wastewater-treatment-plant-operator-certification-administrative regulations;

(4) Review and make recommendations to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators;

(5) Review and assist the cabinet in the preparation of examinations;

(6) Review and provide comments to the cabinet on proposed fees for the training and certification of operators;

(7) Review the certification administrative regulations of states which are seeking reciprocity with the Commonwealth; and

(8) Review evidence and advice of the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and administrative regulations.

Section 4. Application and Examinations for Certification. (1) Application. An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in Section 6 of this administrative regulation. Applications shall be made on a form provided by the cabinet and incorporated by reference in Section 11 of this administrative regulation. Applications shall not be filed with the cabinet until the individual has met the qualifications specified in this administrative regulation.

(2) Examinations. The board and the cabinet shall be jointly responsible for preparation of the examinations which shall be used in determining knowledge, ability and judgment of the applicant. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exam may be administered to applicants who meet the minimum qualifications of Section 10 of the administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of seventy-five (75) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) Scheduling examinations. Examinations shall be conducted at least semiannually at places and times set forth by the cabinet. The cabinet shall provide advance announcement of these examinations.

(4) Exam content. The cabinet shall prepare examinations to address the basic differences in the duties and responsibilities of certified operators, types of facilities, water quality standards, conditions for receiving wastewater and other certification materials.

(5) Applicants who fail to pass an examination may register to take the examination again on a regularly scheduled examination date.

Section 5. Fees. (1) Fees for certification of operators of wastewater systems shall not exceed the following:

(a) Examination-thirty-five (35) dollars

(b) Renewal of certificate-thirty-five (35) dollars per biennium.

Limited certificates: Twenty (20) dollars per year.

(c) Certification by reciprocity-thirty-five (35) dollars.

(d) Reinstatement of lapsed certificate: Not to exceed thirty-five (35) dollars plus renewal fees.

(e) For training sessions conducted by the cabinet: Not to exceeded five (5) dollars per contact hour.

(f) Fees shall not be returned to applicants who do not pass the examination.

(g) The cabinet shall provide an estimate of program costs for the upcoming renewal period and a draft schedule of reasonable fees for that renewal period to the board for approval prior to the beginning of the new renewal period.

Section 6. Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the cabinet shall issue a certificate to the applicant designating the classification of the wastewater system for which the operator has demonstrated
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competency. If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a wastewater treatment plant, the employer shall notify the division. 

(2) Certification and renewal of certificates.

(a) Certificates for all certified operator classes, except limited, as identified in Section 8 of this administrative regulation, shall be valid for up to two (2) years after each renewal, unless suspended or revoked for cause or replaced by a higher classification. Certificates shall expire on June 30 of each year. Certificates may be renewed without examination. If the certificate is renewed, the operator must maintain a practice of giving adequate attention to the repair, maintenance, and operation of the equipment. 

(b) Certification, renewal, and reinstatement—Upon completion of the required training hours outlined in subsection (7) of this section and upon submittal of a complete renewal application and applicable renewal fees, an application for certificate renewal shall be made on a form provided by the cabinet and incorporated by reference in Section 11 of this administrative regulation. If the renewal application and fee are not received by the cabinet by June 30, the certificate shall be considered lapsed and shall not be reinstated without completion of the training required in sub-section (7) of this section and payment of a reinstatement fee as provided in Section 5 of this administrative regulation. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with the renewal requirements of the subsection by June 30 of the renewal year. 

(3) Certification for a higher classification—Certified operators who desire to become certified in a higher classification shall satisfactorily complete the minimum requirements of Sections 4 and 10 of this administrative regulation for the higher classification before submitting a new application. Experience earned under a limited certificate shall not count toward fulfillment of the qualifications for other classifications.

(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his or her knowledge in the performance of his duties. Certificates shall not be valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

(5) Termination of a certificate—Certificates shall terminate if not renewed for two (2) consecutive renewal periods. Limited certificates shall terminate immediately after the expiration date if not renewed. If a certificate terminate, an operator shall apply, pay applicable fees, and pass an examination in the classification for which he is qualified to be certified.

(6) Reciprocity—Certificates may be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the United States or a country if the requirements for certification of operators under which the person’s certificate is issued does not less stringent than the requirements for certification set forth in KRS Chapter 224 and this administrative regulation and reciprocal privileges are granted to certified operators of the Commonwealth.

(7) Training requirements—Certified operators shall accumulate continuing education credits by the cabinet or board prior to applying for certificate renewal.

(a) Class I and II certified operators shall complete twelve (12) hours of training for renewal. Class III and IV certified operators shall complete twenty-four (24) hours of training for each renewal. Training includes, but is not limited to, correspondence course work, conferences, trade shows, meetings, and on-the-job training courses. However, at least one-half (1/2) of the training required for recertification shall be in process control and operation or in the base sciences related to those topics. Training hours accumulated in excess of the minimum number required for renewal may be carried forward for a period of two (2) years from the date earned. No training is required for holders of limited certificates.

(b) Certified operators who teach board-approved training courses may receive, upon approval of the board, hour-for-hour credit for actual instruction time.

(c) The criteria for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of wastewater treatment facilities; and

2. The ability of the instructor to properly present the information.

(d) Alternate training courses may be considered by submittal to the division and review by the board of the following information: the course name, the date, location, and a timed agenda for the course, the credit hours being requested; a summary of the course content of sufficient detail to determine relevance and quality of the course, and the name and credentials of each instructor for the course.

(e) The board may waive any of the requirements of paragraph (a) or the subsection for all or portions of a class of operators as identified in Section 8 of this administrative regulation.

Section 7. Disciplinary Action. A certified operator shall be subject to a disciplinary action identified in this section if the cabinet, in consultation with the board according to this section, determines that the certified operator has practiced fraud or deception in obtaining certification or has failed to properly perform duties; failed to apply knowledge in the performance of duties; or is incompetent, unable to perform, or unwilling to properly perform duties.

(1) Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the procedures outlined in subsection (2) of this section, and may take the form of the following sanctions depending on the severity, duration, and number of the violations.

(a) Prohibition for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certificate (temporary revocations shall be less than one (1) year or more than four (4) years in duration); or

(d) Civil or criminal penalties against the operator.

(2) Initial review procedure. Written complaints received by the board or cabinet on a certified operator. Unless duplicative or frivolous, shall be reviewed within the next scheduled board meeting. If the charges warrant further investigation, the cabinet or board may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken, that the cabinet impose a sanction identified in subsection (1) of this section, or any other action.

(3) Cabinet action. The cabinet shall review the evidence presented by the board's recommendations. Upon completion of the review, the cabinet will initiate the recommended action or notify the board as to why an alternative action was taken. The cabinet operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not have primary responsibility for a wastewater system during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a wastewater system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 10 of this administrative regulation.

(4) Sanction review and removal. During the operator's suspension, the suspension, or temporary or permanent revocation, the board and cabinet
will monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(5) Appeal procedure—An operator who considers himself aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-402(r).

Section 8. Classification of Wastewater Systems. Wastewater systems shall be classified in one (1) of five (5) classes. These classifications shall be made according to population-served, type of treatment process, character and volume of wastes, to be treated, and the use and nature of the waters receiving the system effluent. Classifications I through IV shall be based on the population-served or for which the system is designed, except that a system may be classified by the cabinet and board in a group lower or higher than indicated if the incorporation into the system of special features of design or characteristics makes the system easier or more difficult to operate than usual, or if conditions of flow or use of the receiving water require an unusually low- or high-degree of system operation control, or if combinations of these conditions exist. In addition, a limited classification is available for operators of wastewater facilities owned by school systems. Classes I through IV are as follows:

1. Class I—Systems with a design capacity of less than or equal to 50,000 gallons per day.
2. Class II—Systems with a design capacity more than 50,000 gallons per day, but less than or equal to two (2) million gallons per day.
3. Class III—Systems with a design capacity more than two (2) million gallons per day, but less than or equal to seven (7) million gallons per day.
4. Class IV—Systems with a design capacity in excess of seven (7) and one-half (7-1/2) million gallons per day.

Section 9. Classification of Wastewater System Operators. Five (5) classes of certified operators are hereby established and shall range from Class I through Class IV plus limited. Each operator classification except for limited relates directly to the corresponding classification of wastewater system outlined in Section 8 of this administrative regulation.

Section 10. Certified Operator Qualifications. Experience, Education and Equivalencies. Applicants shall be examined by the cabinet as to education, experience, and knowledge as related to the classification of wastewater systems for which the application applies. Applicants shall pass the required written examination unless granted a waiver to take an oral examination in accordance with Section 40 of this administrative regulation.

1. Classification of Wastewater Treatment Plant Operator Certificates. Experience and educational requirements for certification of operators shall be as follows:
   (a) Class I:
   1. Completion of high school or general education development (GED) efficiency and one (1) year of acceptable operation of a wastewater system.
   (b) Class II:
   1. Completion of high school or GED efficiency.
   2. Two (2) years of acceptable operation of a wastewater system.
   (c) Class III:
   1. Completion of high school or GED efficiency.
   2. Three (3) years of acceptable operation of a wastewater system with one (1) year of that experience in a Class II or higher wastewater system.
   (d) Class IV:
   1. A baccalaureate degree in a standard curriculum in engineering, allied sciences, or equivalent.
   2. At least six (6) years of acceptable operation of a wastewater system. Three (3) years of the required experience shall be in a Class III or higher wastewater system with at least two (2) years of primary responsibility for a Class III or higher system.

   (a) Limited. An operator of a wastewater treatment facility for a school shall be entitled to apply for a limited certificate of competency for the particular facility operated. The certification shall only be issued if the operator has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the specific wastewater facility.

   (2) Substitutions—In evaluating qualifications of operators and experience, educational equivalencies, substitutions may be allowed as follows:
   (a) If applicable, experience may be substituted for a portion of the educational requirements.
   1. Experience, to be acceptable, shall be the result of satisfactory accomplishment of work.
   2. Partial credit may be given for operating experience in maintenance, laboratories, or other work of wastewater systems and allied trades.
   3. To establish how much experience will be accepted, the board shall determine whether the work performed required some technical knowledge and if the applicant was primarily responsible for the operation of the system. In wastewater systems where requirements are divided, supervisors or important divisions may be credited with having primary responsibility.
   4. A one (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school degree or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear in person before the board.
   5. Each year of experience in wastewater operations shall be equivalent to one (1) year of college. Four (4) years of experience approved by the board shall be considered equivalent to a baccalaureate degree.

   (b) Experience applied to educational requirements shall not be applied to the experience requirements.

   (c) If applicable, education may be substituted for a portion of experience requirements as specified below:
   1. One (1) year of college work (limited to curricula in environmental engineering, environmental technology, or related scientific fields) may be considered equivalent to one (1) year of experience.

   2. Education substituted for experience shall not reduce the requirements of actual operating experience to less than three (3) months for Class I, less than one (1) year for Class II, less than two (2) years for Class III, or less than three (3) years for Class IV.

   3. Education applied to the experience requirement shall not be applied to the education requirement.

   (d) Substitutions for formal education may be as follows:
   1. Training credits for board-approved operator training schools, seminars and workshops may be substituted for high school and college requirements upon approval of the board. One (1) year of college work equals thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved courses equals one (1) training credit, and forty-five (45) training credits equals one (1) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) training credit hours. Training credit-substituted for the education requirement shall not be used as continuing education for certificate renewal.

Section 11. Documents Incorporated by Reference. Wastewater System Certified Operators. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

1. Drinking Water or Wastewater Operator Certification Application, Kentucky Division of Water, Frankfort, Kentucky, January 40000-0000.


LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 9, 2008

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VOLUME 35, NUMBER 2 – AUGUST 1, 2008

FILED WITH LRC: July 14, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 8:30 p.m. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, KY 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzeskzy, Director
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation sets standards to ensure that an appropriately certified operator operates wastewater systems.
(b) The necessity of this administrative regulation: This regulation is necessary to ensure that sewage treatment systems comply with the statutory requirement that an operator who has passed an examination by the cabinet operates the sewage system.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is consistent with the pollution prevention goals of KRS Chapter 224.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide requirements for the sewage system and the sewage system operator that are related to the examination and certification of operators. The regulation will separate the requirements applicable to the sewage treatment plant or collection system from those related to the certification operators into different chapters of Title 401 administrative regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will require that certified plant operators operate sewage treatment plants and require that certified collection system operators operate collection systems.
(b) The necessity of the amendment to this administrative regulation: The amendment will continue to require that certified plant operators operate sewage treatment plants and require that certified collection system operators operate collection systems.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.73-110 requires that all parts of a sewage system be operated by an operator who has passed an examination by the cabinet.
(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will be simpler and more effective because it focuses on the requirement of a sewage system to be operated by a certified operator. The details of the examination and certification process are in a separate chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals: There are approximately 1,600 certified operators. There are approximately 2,000 individual residences with wastewater treatment plants. Businesses: There are approximately 900 businesses with wastewater treatment plants. State and Local Government: There are approximately 300 publicly owned facilities that require a certified operator.

(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) What the entities in question (3) will do to comply with the administrative regulation or amendment: Affected entities will have to use certified operators for their plants and for certain collection systems.
(b) How compliance with this administrative regulation or amendment will affect the cost of the entities identified in question (3): Fewer violations of their KPDES discharge permit.
(c) How the regulation will affect the entities identified in question (3): Fewer violations of their KPDES discharge permit.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional burden is anticipated.
(b) On a continuing basis: No additional burden is anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KPDES regulations are funded by existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this regulation.

(6) Provide a description of the benefits of this administrative regulation:
(a) The benefits and costs of the administrative regulation:
(b) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: KPDES regulations are funded by existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this regulation.

(7) Provide an estimate of whether an 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 are expected to support this regulation.

(8) Identify the state or local government that has certified wastewater treatment plant operators:

(9) TIERING: Is being applied?: Tiering is applied based on size of the wastewater treatment facility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects all units of state or local government that have certified wastewater treatment plant operators.
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 requires the Energy and Environment Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.73-110 requires that no person shall have primary responsibility for the operation of any sewage system or a portion of a system whether publicly or privately owned unless he has passed an examination prescribed by the cabinet.

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:
ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:057. KPDES pretreatment requirements.

RELATES TO: KRS 224.01-010, (224.01-070, -024.01-100, 224.70-100, 224.70-120, 224.59-010, 40 C.F.R. 125(e) 5 (130), 131, 136, 258, 261, [Chapter I Subject Matter-N], 401 A761 (445), 403 Appendix [Appendix A, D, 503, 33 U.S.C. 1251-1287 (et seq., 1256-1287, 1314 (f), 1314 (e), 1315 (e), 1316 (e), 1317 (e), 1317 (g), 1318 (e), 1319, 1310, 1312, and 1314, as those federal regulations are references to the cabinet’s pretreatment program, this administrative regulation establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants that pass through or interfere with treatment processes in publicly owned treatment works (POTWs) or that may contaminate sewage sludge. The administrative regulation functions to prevent the introduction of pollutants into a POTW that will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into a POTW that will pass through the treatment works or otherwise be incompatible with the treatment works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

Section 1. Purpose and applicability shall be as established in 40 C.F.R. 403.1, July 1, 2006.

Section 2. This administrative regulation shall not affect pretreatment requirements established by local law if those requirements are not less stringent than those established in state or national pretreatment standards or other requirements or prohibitions established under the National Water Quality Act, 33 U.S.C. 1251-1287 or this administrative regulation.


Section 4. National Pretreatment Standards: Categorical Standards. Categorical standards shall be as established in 40 C.F.R. 403.6, July 1, 2006.

Section 5. The granting of removal credits shall be as established in 40 C.F.R. 403.7, July 1, 2006.

Section 6. The development by a POTW of pretreatment program requirements shall be as established in 40 C.F.R. 403.8, July 1, 2006.

Section 7. The submission for approval of a pretreatment program or authorization to revise pretreatment standards shall be as established in 40 C.F.R. 403.9, July 1, 2006.

Section 8. The approval procedures for POTW pretreatment programs and POTW granting of removal credits shall be as established in 40 C.F.R. 403.11, July 1, 2006.

Section 9. The reporting requirements for POTWs and industrial users shall be as established in 40 C.F.R. 403.12, July 1, 2006.

Section 10. Variances from categorical pretreatment standards as a result of fundamentally different factors shall be as established in 40 C.F.R. 403.13, July 1, 2006.

Section 11. Confidentiality. (1) Authorities. In accordance with KRS 224.10-210, 224.10-212, any information submitted to the cabinet pursuant to this administrative regulation may be exchanged or provided to a third party/individual by the cabinet.

(2) POTW. All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.870 to 61.884.


Section 13. UEP restrictions shall be as established in 40 C.F.R. 403.16, July 1, 2006.


Section 15. Modification of POTW pretreatment programs shall be as established in 40 C.F.R. 403.18, July 1, 2006.

Section 16. Pretreatment program reinvention pilot projects under Project XL shall be as established in 40 C.F.R. 403.20, July 1, 2006.

Section 17. Substitution. "Cabinet" shall replace "Director" in the federal regulations cited in Sections 1 through 16 of this administrative regulation. [Applicability. (1) This administrative regulation shall apply to:

(a) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(b) New or existing source subject to pretreatment standards.

(2) This administrative regulation shall not apply to sources which lawfully discharge to a sewor which is not connected to a POTW treatment plant.

Section 2. Local Law. The administrative regulation shall not affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as local requirements are not less stringent than those set forth in state or national pretreatment standards or other requirements or prohibitions established under the Act or this administrative regulation.

Section 3. Pretreatment Standards: Prohibited Discharges (1) General prohibition. A user may not introduce into a POTW any pollutant which causes pass-through or interference. This general prohibition and the specific prohibitions in subsection (2) of this section shall apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment
standards or national or local pretreatment requirements.

(b) Affirmative defense. A user shall have an affirmative defense in action brought against him alleging a violation of the general prohibitions established in paragraph (a) of this subsection and the specific prohibitions in subsection (2) of this section if the user demonstrates that:

1. It did not know or have reason to know that its discharge, alone or in conjunction with discharges from other sources, would cause a pass-through or interference, and
2. a. A local limit designed to prevent pass-through or interference was developed in accordance with subsection (4) of this section for each pollutant that the user's discharge caused pass-through or interference, and the user was in compliance with each local limit prior to and during the pass-through or interference; or
   b. If a local limit designed to prevent pass-through or interference has not been developed in accordance with subsection (3) of this section for the pollutant that caused the pass-through or interference, the user's discharge directly prior to and during the pass-through or interference did not cause a substantially similar increase in water temperature and that the POTW was in compliance with the POTW's KPDDES permit requirements and, if the violation was interference, was in compliance with applicable requirements for sewage sludge use or disposal.

(2) Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (°F) or sixty (60) degrees Celsius (°C) using the test methods specified in 40 C.F.R. 261.21.

(b) Pollutants which may cause corrosive or structural damage to the POTW, but no discharge with pH lower than five and zero-tenths (5.0), unless the POTW is specifically designed to accommodate the discharge.

(c) Solid or viscous pollutants in amounts which would cause obstruction to the flow in the POTW resulting in interference.

(d) Pollutants, including oxygen-demanding pollutants, biochemical oxygen demand (BOD), etc., released in a discharge at a flow rate or pollutant concentration which would cause interference with the POTW.

(e) Heat in amounts which would inhibit biological activity in the POTW resulting in interference, but no heat in quantities that the temperature at the POTW treatment plant exceeds forty (40) °C (140 °F) unless the cabinet, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that would cause interference or pass-through.

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quality that may cause acute worker health and safety problems or

(h) Trucked or hauled pollutants, except at discharge points designated by the POTW.

(3) The POTW shall develop specific limits under the following conditions:

(a) Each POTW developing a pretreatment program pursuant to section 6 of this administrative regulation shall develop and enforce specific limits to implement the prohibitions listed in subsections (1) and (2) of this section. Each POTW with an approved pretreatment program shall continue to develop those limits as necessary and effectively enforce the limits.

(b) All other POTWs, if pollutants contributed by users result in interference or pass-through, and the violation is likely to recur, shall develop and enforce specific limits for industrial users, and all other users as appropriate, which, together with appropriate changes in the POTW's treatment plants facilities or operation, are necessary to ensure new and continued compliance with the POTW's KPDDES permit or sludge use or disposal practices.

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested these notices and had an opportunity to respond.

(d) Local limits if specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection (3) of this section, the limits shall be deemed pretreatment standards for the purposes of Section 307(d) of this Act, 33 U.S.C. 1317(d).

(e) EPA and cabinet enforcement actions under Section 309(f) of the Clean Water Act, 33 U.S.C. Sec. 1319(f). If, within thirty (30) days after notice of an interference or pass-through violation has been sent by EPA or the cabinet to the POTW and the person or groups who have requested these notices, the POTW fails to commence appropriate enforcement action to correct the violation, EPA or the cabinet may take appropriate enforcement action under the authority provided in Section 309(f) of the Act.

Section 4. National Pretreatment Standards—Categorical Standards—National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories are established as separate federal regulations under the appropriate subparagraph of 40 C.F.R. Chapter I, Subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this administrative regulation.

(1) Category determination request.

(a) Application deadline. Within sixty (60) days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be regulated, the industrial user or POTW may request that the cabinet provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user shall request the certification prior to commencing discharge from the added or changed process or operation. A new source shall request this certification prior to commencing discharge.

(b) Request for certification is submitted by a POTW, the POTW shall notify affected industrial users of the submittion. The industrial user may provide written comments on the POTW submission to the cabinet, within thirty (30) days of notification.

(2) Contents of application. Each request shall contain a statement:

1. Describing which subcategories might be applicable; and

2. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. The person signing the application statement submitted pursuant to this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that I know and understand the information contained in the document, and believe it correctly states the system is in compliance with 40 C.F.R. Part 122.10."

(c) Deficient requests. The cabinet shall act only on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions shall be notified by the cabinet that their requests are deficient and, unless the time period is extended, will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within thirty (30) days or within an extended period allowed by the cabinet, the request for a determination shall be denied.

(d) Final decision. If the cabinet receives a complete and timely submittal, after determining that it contains all of the information required by paragraph (b) of the subsection, the cabinet shall make a decision, in accordance with the submittal, that may be appealed. The cabinet shall then make a written determination of the applicable subcategory and state the reasons for the determination.
tion within sixty (60) days after receipt thereof, or if EPA waives receipt of the determination, the cabinet's decision shall be final.

3. If the request is submitted by the industrial user or POTW to EPA or if EPA elects to modify the cabinet's decision, EPA's decision shall be final.

4. EPA or the cabinet, as appropriate, shall send a copy of the determination to the affected industrial user and the POTW. If the final determination is made by EPA, EPA shall send a copy of the determination to the cabinet.

(c) Requests for hearing or legal decision. Within thirty (30) days following the date of receipt of notice of the final determination as provided for by paragraph (d) of this subsection, the requester may submit a petition to reconsider or contest the final determination to the EPA regional administrator who shall act on the petition expeditiously and state the reasons for the determination in writing.

(2) Deadline for compliance with categorical standards. Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 C.F.R. Chapter I, Subchapter N. Direct dischargers with KPDES permits modified or rescinded to provide a variance pursuant to Section 301(n)(2) of the Act, 33 U.S.C. 1311(n)(2) shall meet compliance dates set in applicable categorical pretreatment standards. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users unless the source meets the conditions of a new source. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, new sources shall meet all applicable pretreatment standards.

(3) Concentration and mass limits. Pollutant discharge limits in categorical pretreatment standards shall be expressed either as concentration or mass limits. If possible, if concentration limits are specified in standards, equivalent mass limits will be provided. If not, the cabinet, or federal authority responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

(b) If the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent mass limits, expressed as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

(d) A control authority calculating equivalent concentration limitations under paragraph (b) of this subsection shall subtract the limitations by dividing the mass limitations derived under paragraph (c) of this subsection by the average daily flow rate of the industrial user's average rate of production. This average rate of production shall be based on the average daily production, if the average daily production is based on a representative year. For new sources, actual production shall be estimated using projected production.

(e) Equivalent limitations calculated in accordance with paragraphs (c) and (d) of this subsection shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act, 33 U.S.C. 1317(d) and this administrative regulation. Industrial users shall comply with the limitations in lieu of the categorical standards from which the equivalent limitations were derived.

(f) Many categorical pretreatment standards specify one (1) limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four (4) day-average limitations. If these standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(g) Industrial users operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a precipitation based standard, shall comply with the limitations within two (2) business days after the user has a reasonable basis to know that the production will significantly change within the next calendar month. A user notified by the control authority of an anticipated change shall meet the mass or concentration limits in the control mechanism that were based on the original estimate of the long term average production rate.

(4) Dilution prohibited as substitute for treatment. Unless expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in other ways attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases if the imposition of mass limitations is appropriate.

(5) Combined waste stream formula. If process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed-alternative discharge limits may be derived by the control authority, or by the industrial user with written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. These alternative daily limit shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification shall be authorized if there is a material or significant change in the value used in the calculation to find alternative limits for the regulated pollutant. An industrial user shall immediately report any material or significant changes to the control authority. If appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

(a) Alternate limit calculation. Either of the formulas in subparagraphs 2 or 3 of this paragraph shall be used for deriving an alternative limit for a specified pollutant.

- The average daily-flow rate shall be a reasonable measure of the average daily flow over a thirty (30) day period from the following sources; for new sources, flow shall be estimated using projected values:
  - Boiler blowdown streams, noncontact cooling streams, storm water streams, and demineralizer backwash streams. However, these streams contain a significant amount of a pollutant; and the combination of these streams, prior to treatment, with an industrial user's regulated process waste stream will result in a substantial reduction of that pollutant, the control authority, upon application to the control authority, the industrial user shall provide engineering, production, sampling, and analysis, and other information necessary so that the control authority is able to make its determination.

b. Sanitary waste streams that are not regulated by a categorical pretreatment standard; or
c. From process waste streams which were or could have been entirely exempted from categorical pretreatment standards by the U.S. EPA for one (1) or more of the following reasons, and are listed in 40 C.F.R. Part 402, Appendix D:
  - The pollutants of concern are not detectable in the effluent from the industrial user;
  - The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
  - The pollutants of concern are present in amounts too small to be effectively reduced by technology known to the U.S. EPA.
The waste stream contains only pollutants which are compatible with the POTW.
### Fluoride

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<th>Pollutant</th>
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<th>LA</th>
<th>Unilod®</th>
<th>Linod®</th>
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**Fluoride**

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**where:**

- LA—Land application;
- SD—Surface disposal;
- 1—Incorporation;
- sew—Sewage sludge unit without a liner and leachate collection system;
- sew—Sewage sludge unit with a liner and leachate collection system;
- Value expressed in grams per kilogram, dry weight basis.

For any pollutant in sewage sludge if the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 C.F.R. Part 258.

6. KPDES permit limitations. The granting of removal credits shall cause a violation of the POTW’s permit limits and conditions. Alternately, the POTW may demonstrate to the cabinet that even though it is not presently in compliance with applicable limitations and conditions in its KPDES permit, it will be in compliance if the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards, as modified by the removal credit provision.

(c) Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

\[
y = \frac{X}{1 - r}
\]

where:

- \(X\) = pollutant discharge limit specified in the applicable categorical pretreatment standard;
- \(r\) = removal credit for that pollutant as established under subsection (2) of this section; percentage removal—expressed as a proportion, i.e., a number between zero and one (1); and
- \(y\) = revised discharge limit for the specified pollutant, expressed in same units as \(y\).

(2) Establishment of removal credits; demonstration of consistent removal.

(a) Consistent removal. Consistent removal shall be the average of the lowest fifty (50) percent of the removal measured according to paragraph (b) of this subsection. All sample data obtained for the measured pollutant during a consecutive month shall be reported and used in computing consistent removal. If a substance is measurable in the influent and not in the effluent, the effluent level may be assumed to be the limit of measurement, and these data may be used by the POTW subject to approval by the cabinet. If the substance is not measurable in the influent, the data shall not be used. If the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest (4) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the cabinet may approve alternate means for demonstrating consistent removal. Measurement shall refer to the...
ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(b) Consistent removal data. Influent and effluent operational data—demonstrating consistent removal—or other information as provided for in paragraph (e) of this subsection—demonstrating consistent removal of the pollutants for which discharge limits or revisions are proposed shall be considered by the cabinet. Those data shall meet the following requirements:

1. Representative data, seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

2. Representative data, quality and quantity. The data shall be representative of the quality and quantity of normal influent and effluent flow. If representative data cannot be obtained, data are not obtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in paragraph (a) of this subsection.

3. Sampling procedures: composite. The influent and effluent operational data shall be obtained through twenty-four (24) hour flow proportional composite samples. Sampling may be done manually or automatically, and discrete or continuously. For discrete sampling, at least twelve (12) aliquots shall be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composite shall be flow proportional to the influent flow rate of the sampling location; the total influent flow shall be the total influent flow times the previous influent aliquot. Volatile pollutant aliquots shall be composited in the laboratory immediately before analysis.

4. Twelve (12) samples shall be taken at approximately equal intervals throughout one (1) full year. Sampling shall be evenly distributed over the days of the week so as to include non-workdays as well as workdays. If the cabinet determines that this schedule is not the most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule shall be approved.

5. In addition, upon the cabinet’s concurrence, a POTW may utilize an historical data base amassed prior to November 6, 1987 if the data otherwise meet the requirements of this subsection. For the historical data base to be approved, it shall represent a statistically valid description of daily, weekly, and seasonal sewage treatment plant loadings and performance for at least one (1) year.

6. Effluent sample collection shall not be required to be delayed to compensate for hydraulic detention unless the POTW desires to include detention time compensation or unless the cabinet requires detention time compensation. The cabinet may require that effluent samples be collected and analyzed immediately or on a time-lag later than the corresponding influent sample if failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period shall be based on a twenty-four (24) hour average daily flow value. The average daily flow shall be based upon the average of the daily flows during the same month of the previous year.

7. Sampling procedures: grab. If composite sampling is not an appropriate sampling technique, grab samples shall be taken to obtain influent and effluent operational data. A grab sample shall be an individual sample collected over a period of time not exceeding fifteen (15) minutes. Collection of influent grab samples shall precede collection of effluent samples by approximately one (1) detention period. The detention period shall be based on a twenty-four (24) hour average daily flow value. The average daily flow shall be based upon the average of the daily flows during the same month of the previous year. Grab samples shall be taken for example. if the parameters being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical, or physical interactions which take place after sample collection and affect the results.

8. The data required to be in subparagraphs 1 to 4 of this paragraph and an analysis of these samples shall be performed in accordance with the technique prescribed in 40 C.F.R. Part 136 and amendments thereto. If 40 C.F.R. Part 136 does not contain sampling or analysis techniques for the pollutant in question, or if the cabinet or EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties approved by EPA.

9. Calculation of credits. All data required under the provisions of this section shall be submitted to the cabinet. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or if these data cannot be obtained, removal may be determined using other data or procedures subject to concurrence by the cabinet as provided for in paragraph (a) of this subsection.

10. Provisional credits: For pollutants which are not being discharged currently, i.e., new or modified facilities or plant expansions, the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatment studies or demonstrated removal at other treatment facilities if the quality and quantity of influent are similar. Within eighteen (18) months after the commencement of discharge of pollutants in question, consistent removal shall be demonstrated pursuant to the requirements of subsection (2) of this section. If, within eighteen (18) months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection (2) of this section, the Authority to grant provisional removal credits shall be terminated by the cabinet and all industrial users to whom the revised discharge limit had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the cabinet.

11. Exception to POTW pretreatment program requirements. A POTW required to develop a local pretreatment program by Section 6 of this administrative regulation may conditionally give removal credits pending approval of this type of program in accordance with the following terms and conditions:

(a) All industrial users who are currently subject to categorical pretreatment standards and who were conditionally given a removal credit shall submit to the POTW information required in Section (9)(1) of this administrative regulation, except that new or modified industrial users shall submit only the information required by Section (9)(1)(a) to (f) of this administrative regulation, pertinent to the categorical pretreatment standards as modified by the removal credit. The industrial users shall indicate what additional technology will be needed to comply with the categorical pretreatment standards as modified by the removal credit.

(b) The POTW shall have submitted to the cabinet an application for the pretreatment program approval meeting the requirements of Sections 6 and 7 of the administrative regulation in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW’s KPDES permit.

(c) The POTW shall:

1. Compile and submit data demonstrating its consistent removal in accordance with subsection (2) of this section;
2. Comply with the conditions specified in subsection (1)(b) of this section; and
3. Submit a complete application for removal credit authority in accordance with subsection (6) of this section.

(d) If a POTW receives an authority to grant conditional removal credits and the cabinet subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (b) and (c) of this subsection, the authority to grant conditional removal credits shall be terminated by the cabinet and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time as specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the cabinet.

(e) If a POTW grants conditional removal credits and the POTW or the cabinet subsequently makes a final determination,
after appropriate notice, that the industrial users failed to comply with the conditions in paragraph (a) of the subclause, the conditional credit shall be terminated by the POTW or the cabinet for the non-complying industrial users and the industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time as specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards. The conditional credit shall not be terminated if a violation of the provisions of this subsection results from causes entirely outside of the control of the industrial users or the industrial users had demonstrated substantial compliance.

(i) If the cabinet does not receive an application for conditional removal credit authorization upon receipt of the application, the conditionally revised discharge limits shall remain in effect until reviewed by the cabinet. This review shall occur no later than the time of a pretreatment program approval or a related KPDES permit issuance, according to procedures in Section 8 of this administrative regulation.

(ii) POTW application for authorization to give removal credits and cabinet review.

(a) Who shall apply. A POTW that wants to give a removal credit shall apply for authorization from the cabinet.

(b) To whom the application shall be made. An application for authorization to give removal credits or modify existing ones shall be submitted by the POTW to the cabinet. For a POTW to modify existing removal credits, it must file an application for authorization to give or modify removal credits at any time.

(c) Contents of the application. An application for authorization to give removal credits shall include the following information:

1. List of pollutants. A list of pollutants for which removal credits are proposed.

2. Consent removal data. The data required pursuant to subsection (2) of this section.

3. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subsection (1)(c) of this section.

4. Local pretreatment program certification. Certification that the POTW has an approved local pretreatment program or qualifies for the exception to the requirement found at subsection (4) of this section.

5. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subsection (1)(b)(4) of this section.

6. KPDES permit limit certification. Certification that the granting of removal credits will not cause a violation of the POTW's KPDES permit limits and conditions as required in subsection (1)(b)(5) of this section.

7. Cabinet's review. The cabinet shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of Section 8 of this administrative regulation and shall not have more than 180 days from public notice of an application to complete the review.

8. Nothing in this administrative regulation precludes an industrial user or other interested party from assisting the POTW in preparing and preconing the information necessary to apply for authorization.

9. Continuation and withdrawal of authorization.

(a) Effect of authorization. After a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant if it is regulated in other categorical standards, unless granting the removal credit would cause the POTW to violate the sludge requirements identified in subsection (1)(b)(4) of this section or its KPDES permit limits and conditions as required by subsection (1)(b)(5) of this section. If a POTW fails to extend removal credits to a certain categorical pretreatment standard, industrial subcategory, or one or more industrial users that initially were not granted removal credits, it shall notify the cabinet.

(b) Inclusion in POTW permit. After authority is granted, the removal credits shall be included in the POTW's KPDES permit as soon as possible and shall become an enforceable requirement of the POTW's KPDES permit. The removal credits shall remain in effect for the term of the POTW's KPDES permit, if the POTW maintains compliance with the conditions specified in paragraph (d) of this subsection.

(c) Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on the POTW's removal capabilities at intervals as specified by the cabinet, but no less than once per year. A minimum of one (1) representative sample per month during the reporting period shall be taken, and all sampling data shall be included in the POTW's compliance report.

(d) Modification or withdrawal of removal credits.

1. Notice of POTW. The cabinet shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (c) of this subsection or other relevant information available to it, the cabinet determines:

a. That one (1) or more of the discharge limit revisions made by the POTW or the POTW itself, no longer meets the requirements of this subsection.

b. That the discharge limit revisions are causing a violation of conditions or limits contained in the POTW's KPDES permit.

2. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days, unless the POTW or the affected industrial users demonstrate that a longer period is reasonably necessary to undertake the appropriate corrective action, the cabinet shall either withdraw the discharge limits or require modifications in the revised discharge limits.

3. Public notice of withdrawal or modification. The cabinet shall not withdraw or modify revised discharge limits unless it has first notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for the withdrawal or modification, and an opportunity to provide for a public hearing. Following the notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with the limits within a reasonable time as may be specified by the cabinet, not to exceed the period of time prescribed in this subsection.

4. Compensation for overflow. POTWs which overflow untreated wastewater to receiving waters at least once annually may claim consistent removal of a pollutant only by complying with either paragraph (a) or (b) of this subsection. However, the subsection shall not apply if industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant.

(a) The industrial user shall provide containment or otherwise shall cease or reduce discharges from the regulated processess which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur. The POTW or at a sewer to which the industrial user is connected. Discharges shall cease or be reduced, or treatment shall be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision shall be granted only if the POTW submits to the cabinet evidence that:

1. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce discharges from the regulated processes which contain pollutants for which an allowance is requested.

2. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will mall of an insufficient overflow event to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in subparagraph 3 of this paragraph, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflows, and
3. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, cabinet, or EPA regional administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing pollutants for which the allowance is requested are contained, reduced, or otherwise controlled, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur.

(b) The consented removal claimed shall be reduced pursuant to the following equation:

\[ t_{el} = \frac{t_{em}}{Z} \]

where:

- \( t_{em} \) = POTW's consented removal rate for that pollutant as established under subsection (b) of this section;
- \( t_{el} \) = removal corrected by the overflow factor; and
- \( Z \) = hours per year that overflow occurred between the industrial user and the POTW treatment plant, the hours either to be shown in the POTW's current KPDES permit application or the hours, as demonstrated by verifiable technique, that a particular industrial user discharges overflow between the industrial user and the POTW treatment plant.

2. After July 1, 1985, consistent removal may be claimed only if reasonable efforts to correct the conditions resulting in uncontrolled discharges by the POTW are underway in accordance with the policy and procedures set forth in 40 C.F.R. Part 403, Appendix A, adopted without change. Revisions to discharge limits in categorical pretreatment standards may not be made if reasonable efforts have not been committed to by the POTW to minimize pollution from overflows. At a minimum, the POTW shall have completed the analysis required by 40 C.F.R. Part 403, Appendix A and be making a reasonable effort to implement the plan.

3. If, by July 1, 1987, as a POTW has begun the 40 C.F.R. Part 403, Appendix A analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the cabinet, may continue to be claimed according to the formula in subparagraph 1 of this paragraph if the POTW acts in a timely fashion to complete the analysis and make an effort to implement the nonstructural cost-effective measures identified by the analysis; and if the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement other cost-effective overflow controls identified in the analysis if Federal funds are available, applies for the necessary funds, and proceeds in accordance with a reasonable time period. In addition, consistent removal may be subject to the approval of the cabinet, continue to be claimed according to the formula in subparagraph 1 of this paragraph if the POTW has completed and the cabinet has accepted the analysis required by 40 C.F.R. Part 403, Appendix A and the POTW has requested inclusion in its KPDES permit of an acceptable compliance schedule providing for timely implementation of other cost-effective measures identified in the analysis. In determining what is timely implementation, the cabinet shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.

Section 6. Pretreatment Program Requirements: Development and Implementation of POTW Pretreatment Program. A POTW, or a combination of POTWs operated by the same authority, with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users a pollutant which passes through or is applicable with the operation of the POTW or are otherwise subject to pretreatment standards that establish a pretreatment program. A POTW with a design flow of five (5) MGD or less shall develop a pretreatment program if the POTW determines that the nature or volume of the POTW wastewater, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant to prevent interference with the POTW or pass through.

(2) Deadline for program approval. A POTW which meets the criteria set forth in subsection (1) of this section and is identified through written notification by the cabinet shall develop and submit a pretreatment program for approval as soon as possible, but no later than one (1)-year after written notification from the cabinet of the identification. The pretreatment program shall meet the criteria set forth in subsection (1) of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(a) Incorporation of approved programs. Incorporation of approved programs in permits. A POTW may develop an appropriate pretreatment program any time before the time limit set forth in subsection (2) of this section. The POTW's KPDES permit shall be reissued or modified by the cabinet to incorporate the approved program condition as an enforceable condition of the permit. The modification of a POTW's KPDES permit for the purpose of incorporating a POTW pretreatment program approved in accordance with the procedures in Section 6 of this administrative regulation shall be deemed a minor permit modification subject to the procedures in 401 KAR 5:070, Section 6(3).

(4) POTW pretreatment requirements. A POTW pretreatment program shall be based on the following legal authority and include the following procedures. These authorities and procedures shall be fully and effectively enforced.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal courts or courts of the Commonwealth, which authorize or enable the POTW to apply and enforce federal or state statutes and any administrative regulations implementing these statutes. The authority may be contained in statutes, ordinances, or joint power agreements, which the POTW is authorized to enter into and implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants or flows, or changes in the nature of pollutants, to the POTW by industrial users if the contributions do not meet applicable pretreatment standards and requirements or if the contributions would cause the POTW to violate its KPDES permit.

2. Require compliance with applicable pretreatment standards and requirements by industrial users.

3. Control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements if industrial users are identified as significant, the control shall be achieved through permits or equivalent, individual control mechanisms issued to each identified user. The control mechanisms shall be enforceable and contain, at a minimum, the following conditions:

a. A statement of duration of no more than five (5) years;

b. A statement of nontransferability, without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator.

c. Efluent limits specific to the applicable pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law, whenever is more stringent;

d. Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law, and

e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and applicable compliance schedules. The schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet the applicable pretreatment standards and requirements and the submission of all notice and self-monitoring reports from industrial users as are necessary to assess and ensure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in Section 6 of this administrative regulation.

5. Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independently of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises controlled by the POTW for the purpose of verifying compliance with applicable pretreatment standards and requirements.
of an industrial user in which a discharge source or treatment system is located or in which records are required to be kept to assure compliance with pretreatment standards and requirements. The authority shall be at least as extensive as the authority provided under Section 308 of the Act, 33 U.S.C. 1321; and

b. Obtain an enforceable commitment from an industrial user with any pretreatment standards or requirements. All POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards or requirements. All POTW shall also have authority to seek civil or criminal penalties, as authorized by law, in at least the amount of $1,000 a day for each violation by industrial users of pretreatment standards or requirements. POTW, whose approved pretreatment program requires modification to conform to the requirements of the paragraph shall submit a request for approval of a program modification in accordance with Section 15 of this administrative regulation.

c. Protreatment requirements which will be enforced through the remedies set forth in clause a of this subparagraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; rule; local regulations, or orders issued by the POTW; requirements set forth in individual control mechanisms issued by the POTW, and reporting requirements imposed by the POTW or this administrative regulation. The POTW shall have authority and procedures, after notice to the discharger, immediately and effectively, to halt or prevent a discharge of pollutants to the POTW which reasonably appears to present an immediate hazard to the bodies or waters into which the discharge is made. The POTW shall also have authority and procedures, which shall include notice to the affected industrial users and an opportunity to respond, to halt or prevent a discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The cabinet shall have authority to seek judicial relief and may also use administrative penalties authorized when the POTW brings a complaint of violation, which the cabinet believes to be insufficient.

7. Comply with the confidentiality requirements set forth in Section 11 of this administrative regulation.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the pretreatment program. A compilation, index, or inventory of industrial users made under this administrative regulation shall be made available to the cabinet upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified in subparagraph 1 of this paragraph. This information shall be made available to the cabinet upon request;

3. Notify industrial users identified according to subparagraph 1 of this paragraph of their obligations and requirements under Sections 304(b) and 405 of the Act and Subtitle C and D of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. Within thirty (30) days of approval puruant to paragraph 4 of this subsection of a list of significant industrial users, notify each significant industrial user of its status and of all requirements applicable to it as a result of that status;

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in Section 5 of this administrative regulation;

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities to identify independent of information supplied by industrial users, occasions and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two (2) years, whether each significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge shall be a discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or nonconventional batch discharge. The results of these activities shall be available to the cabinet upon request. If the POTW determines that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including nonroutine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including a discharge that would violate a prohibition under Section 304 or this administrative regulation, with procedures for follow-up written notification within five (5) calendar days; and

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, or measures and equipment necessary for emergency response.

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by Section 6 of this administrative regulation, or indicated by analysis, inspection, and surveillance activities, decreed in subparagraph 4 of this paragraph. Sample taking and analysis, and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

7. Comply with the public participation requirements of 40 C.F.R. Part 285, adopted without change, in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in the largest daily newspapers published in this state by the owner or operator of the POTW. If no such newspaper is located, of industries users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user shall be in significant noncompliance if its violation meets one (1) or more of the following criteria:

a. Chronic violations of wastewater discharge limits, which shall be those violations in which sixty-six (66) percent or more of all of the measurements taken during a six (6)-month period exceed by any magnitude the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical review criteria (TRC) violations, which shall be those violations in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six (6)-month period exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC:

TRC = 1.4 for BOD, total suspended solids (TSS), fat, oil, and grease, and TRC = 1.2 for all other pollutants except pH;

c. Other violations of a pretreatment effluent limit (daily maximum or longer-term averaged) that the control authority determines has caused, alone or in combination with other discharge, interference or pass-through, or endangering the health of POTW personnel or the general public;

d. A discharge of a pollutant that has caused imminent danger to public health, to welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (a)(5) of this subsection to halt or prevent such discharge;

e. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milepost contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance or other violations or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program;

(h) Fundings. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraph (a) and (b) of this subsection. In some limitations, the control authority may delay, if the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in the section and a limited depot of the program is not required to be implemented immediately.

(i) Local limits. The POTW shall develop local limits as re-
quired in Section 3(3)(a) of this administrative regulation or demonstrate that they are not necessary.

(e) The PCTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a PCTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:
1. Describe how the PCTW will investigate instances of noncompliance;
2. Describe the types of escalating enforcement responses the PCTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
3. Identify by title the officials responsible for each type of response; and
4. Adequately reflect the PCTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in paragraphs (a) and (b) of this subsection.

(f) The PCTW shall prepare and maintain a list of its industrial users meeting the criteria in 401-KAR 5 002, Section 1, of a significant industrial user.

1. The list shall identify the criteria in 401-KAR 5 002, Section 1, applicable to each industrial user and, for industrial users meeting the criteria of a significant industrial user, shall also indicate if the PCTW has made a determination pursuant to 401-KAR 5 002, Section 1, that the industrial user shall not be considered a significant industrial user.

2. This list shall be submitted to the cabinet pursuant to Section 7 of this administrative regulation, as a nonsubstantive program modification pursuant to Section 16(4) of this administrative regulation.

3. Modifications to the list shall be submitted to the cabinet pursuant to Section 9(5)(a) of this administrative regulation.

Section 7. Pretreatment Programs or Authorization to Revise Pretreatment Standards—Submission for Approval. (1) Who approves program. A PCTW requesting approval of a pretreatment program shall develop a program description which includes the information set forth in subsection (2)(a) through (d) of this section. This description shall be submitted to the cabinet which shall make a determination on the request for program approval in accordance with the procedures described in Section 8 of this administrative regulation.

(2) Contents of POTW program submission. The program description shall contain the following information:
(a) A statement from the city attorney or counsel that the PCTW has adequate authority to carry out the program described in Section 8 of this administrative regulation. The statement shall identify the jurisdictional authority (e.g., the legal authority which provides the base for each procedure) identified in Section 6(4)(b) of this administrative regulation;
(b) The manner in which the PCTW will implement the program requirements set forth in Section 8 of this administrative regulation, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and
(c) The manner in which the PCTW intends to ensure compliance with pretreatment standards and requirements and to enforce them if industrial users do not comply with them;
(b) A copy of statutes, ordinances, local regulations, agreements, or other authorities relied upon by the PCTW for its administration of the program. This submission shall include a statement reflecting the existence and approval of the local boards or bodies responsible for supervising or funding the pretreatment program if approved;
(c) A brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program, the responsible agencies shall be identified, their respective responsibilities shall be delineated, and their procedures for coordination shall be set forth; and
(d) A description of the funding agencies and full-time and part-time personnel available to implement the program.

(3) Conditional approval. The PCTW may request a conditional approval of the pretreatment program pending the acquiescence of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements in subsection (2) of this section, but those requirements may be relaxed if the submission demonstrates that:
(a) A limited aspect of the program does not need to be implemented immediately;
(b) The PCTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and
(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The PCTW shall describe in the submission the mechanism by which the funding will be acquired. Upon receipt of a request for conditional approval, the cabinet shall establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the pretreatment program and any removal allowances granted to the PCTW may be modified or withdrawn.

(4) Content of removal allowance submission. The request for authority to revise categorical pretreatment standards shall contain the information required in Section 8(4) of this administrative regulation.

(5) Cabinet action. A PCTW requesting pretreatment program approval shall submit to the cabinet two (2) copies of the submission described in subsection (2) of this section, and if appropriate, subsection (4) of this section. Within sixty (60) days after receiving the submission, the cabinet shall make a preliminary determination of whether the submission meets the requirements of subsection (2) of this section, and if appropriate, subsection (4) of this section. If the cabinet makes the preliminary determination that the submission meets these requirements, the cabinet shall:
(a) Notify the PCTW that the submission has been received and is under review; and
(b) Commence the public notice and evaluation activities set forth in Section 8 of this administrative regulation.

(6) Notification if submission is defective. If, after review of the submission as provided for in subsection (5) of this section, the cabinet determines that the submission does not comply with the requirements of subsection (2) or (3) of this section and subsection (4) of this section, if appropriate, the cabinet shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify defects in the submission and advise the POTW and each person who has requested individual notice of the manner by which the POTW can comply with the applicable requirements of subsections (2) and (3) of this section and subsection (4) of this section, if appropriate.

(7) Consistency with water quality management plans. The pretreatment program shall be consistent with approved water quality management plans developed in accordance with Section 208 Regional Facility Plan of the Clean Water Act, 33 U.S.C. 1288 and 40 C.F.R. Parts 126-131, as revised, if the Section 208 Regional Facility Plan includes management agency designations and addresses pretreatment in a manner consistent with the administrative regulation. To assure the consistency of the cabinet shall solicit the review and comment of the appropriate Section 208 regional planning agency during the public comment period provided for in Section 8 of this administrative regulation prior to approval or disapproval of the program;

(8) If no Section 208 Regional Facility Plan has been approved or if a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with this administrative regulation, the cabinet shall nevertheless solicit the review and comment of the appropriate Section 208 regional planning agency.

Section 8. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits. The following procedures shall apply in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization:

(1) Deadline for review of submission. The cabinet shall have ninety (90) days from the date of public notice of a submission complying with the requirements of Section 7 of this administrative regulation and, if removal credit authorization is sought, with Seco-
tions 5(6) and 7(4) of this administrative regulation, to review the submission. The cabinet shall review the submission to determine compliance with the requirements of Sections 5(2) and (4) of the administrative regulation and, if removal credit authorization is sought, with Section 7(3) of this administrative regulation. The cabinet may take up to an additional sixty (60) days to complete the evaluation of the submission if the public comment period provided for in subsection 2(a) of this section is extended beyond thirty (30) days or if a public hearing is held as provided for in subsection 2(b) of this section. The time for evaluation of the submission shall not exceed a total of 180 days from the date of public notice of a submission meeting the requirements of Section 7(2) of this administrative regulation and if removal allowance approval is requested, Sections 5(6) and 7(4) of this administrative regulation; the cabinet shall:

(a) Issue a public notice of request for approval of the submission.

1. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include:

(a) Mailing notice of the request for approval of the submission to designated Section 208 regional planning agencies, federal fish, shellfish, and wildlife resource agencies unless these agencies have asked not to be sent the notices; Kentucky Department of Fish and Wildlife; and to other persons or groups who have requested individual notice, including those on appropriate mailing lists; and

(b) Publication of a notice of request for approval of the submission in a newspaper of general circulation within the jurisdiction served by the POTW. The cost of the advertisement shall be borne by the applicant.

2. The public notice shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.

3. All written comments submitted during the thirty (30) day comment period shall be retained by the cabinet and considered in the decision on whether or not to approve the submission. The period for comment may be extended by the cabinet.

(b) Provide an opportunity for the applicant, an affected state, interested federal-agency person, or group of persons to receive a public hearing on the proposed removal credit.

1. This request for public hearing shall be filed within the thirty (30)-day or, extended, comment period described in paragraph (a) of this subsection and shall indicate the interest of the person filing the request and the reasons why a hearing is warranted.

2. The cabinet shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under paragraph (a)(1) of this subsection. The cost of the advertisement shall be borne by the applicant. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(c) Cabinet decision. At the end of the thirty (30) day, or extended, comment period and within the ninety (90) day, or extended, period provided for in subsection 2(a) of this section, the cabinet shall—upon or after the expiration of the comment period and the record of the public hearing, if held—if the cabinet makes a determination to deny the request, the cabinet shall notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the cabinet may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(d) EPA objection to cabinet's decision. No pretreatment program or authorization to grant removal allowances shall be approved by the cabinet if it determines, after the initial period, evaluation period provided for in subsection 2(a) of this section and a hearing held pursuant to subsection 2(b) of this section the regional administrator sets forth in writing objections to the approval of the submission and the reasons for the objections. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on its objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a pretreatment program or authorization to grant removal allowances ninety (90) days after the date the objections are issued.

(e) Notice of decision. The cabinet shall notify those persons were notified concerning and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the cabinet shall cause to be published notices of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The cabinet shall include in the notice of pretreatment program approval any authorization to modify categorical pretreatment standards which the POTW may make, in accordance with Section 5(6) of the administrative regulation, for removal or pollutants subject to pretreatment standards.

(f) Public access to submission. The cabinet shall ensure that the submission and comments upon the submission are available to the public for inspection and copying.

Section 9. Reporting Requirements for POTWs and Industrial Users. (1) Reporting requirements for industrial users upon effective date of categorical pretreatment standards. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under Section 4 of this administrative regulation, whichever is later, existing industrial users subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a report which contains the information listed in this subsection. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the control authority a report which contains the information listed in this subsection. New sources shall also include in the report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall provide estimates of the information requested in paragraphs (d) and (e) of this subsection.

(a) Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

(b) Permits. The user shall submit a list of environmental control permits held by or for the facility.

(c) Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

1. Regulated process stream(s); and

2. Other process streams to allow use of the combined waste stream formula of Section 4(5) of the administrative regulation, as referenced in paragraph (e)(5) of this subsection. The control authority may allow verifiable estimates of these flows if justified by cost or feasibility considerations.

(e) Measurement of pollutants.
1. The user shall identify the pretreatment standards applicable to each regulated process;
2. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, if mass is required by the standard or control authority, of regulated pollutants in the effluent from each of the industrial processes—both daily maximum and average concentration, or mass, if required, shall be reported. The sample shall be representative of daily operations;
and
3. A minimum of four (4) grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, twenty-four (24) hour composite samples shall be obtained through flow proportional composite sampling techniques feasible. The control authority may waive flow proportional composite sampling for an industrial user that demonstrates that flow proportional sampling is not feasible. If flow sampling is not feasible, samples may be obtained through time proportional composite sampling techniques or through a minimum of four (4) grab samples if the user demonstrates that this will provide a representative sample of the effluent being discharged.
4. The user shall take a minimum of one (1) representative sample to compile data necessary to comply with the requirements of this subsection;
5. Samples shall be taken immediately downstream from pretreatment facilities if they exist or immediately downstream from the regulated process if no pretreatment facility exists. If other wastewaters are mixed with the regulated wastewater, the user must measure and document necessary data to allow use of the combined waste stream formula of Section 4 of this administrative regulation to evaluate compliance with the pretreatment standards. If an alternate concentration or mass limit has been calculated in accordance with Section 4 of this administrative regulation, this adjusted limit and the supporting data shall be submitted to the control authority;
6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 and amendments thereto. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or if the regional administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the regional administrator;
7. The control authority may allow the submission of a baseline report which utilizes only historical data as long as the data provide information sufficient to determine the need for industrial pretreatment measures;
8. The baseline report shall indicate the time, date and place, of sampling and methods of analysis and shall certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;
(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements;
(g) Compliance schedule. If additional pretreatment or O&M will be required to meet the pretreatment standards, the user shall submit the schedule by which the industrial user will provide the additional pretreatment or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard;
1. If the industrial user's categorical pretreatment standard has been modified by a removal allowance pursuant to Section 4 of this administrative regulation, the combined waste stream formula prescribed in Section 4 of this administrative regulation shall be used in the discharge from the industrial user.
2. If the categorical pretreatment standard is modified by a removal allowance pursuant to Section 5 of this administrative regulation, the combined waste stream formula prescribed in Section 5 of this administrative regulation, or a fundamentally different factor variance pursuant to Section 10 of this administrative regulation when the user submits the report required by this subsection, the information required by paragraph (f) of this subsection and this paragraph shall pertain to the modified limit.
3. Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subsection (g) of this section:
(a) The schedule shall include the equivalent of points of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commissioning construction, completing construction, etc.).
(b) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months.
(c) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority indicating, at a minimum, whether or not it complied with the increment of progress to be met on the date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. No more than nine (9) months shall elapse between the progress reports to the control authority.
3. Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or if a new source, following commencement of the introduction of wastewater into the POTW, an industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (H)(a) to (f) of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(a) of this administrative regulation, the report shall contain a reasonable measure of the users' long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, the report shall include the user's actual production during the appropriate sampling period;
4. Periodic reports on continued compliance.
(a) An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard, or, if a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard, by the control authority, or by the cabinet, a report indicating the nature and concentration of pollutants in the effluent which are limited by the categorical pretreatment standard. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (H)(d) of this section except that the control authority may require more detailed reporting of flows, in consideration of factors such as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports shall be submitted.
(b) If the control authority has imposed mass limitations on industrial users as provided for by Section 4(a) of this administrative regulation, the report required by paragraph (a) of this subsection shall include the mass of pollutants regulated by pretreatment standards or requirements in the discharge from the industrial user.
(c) Industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(a) of this administrative regulation, the report required by paragraph (a) of this subsection shall contain a reasonable measure of the user's long-term production rate. For all other industrial
users subject to categorical pretreatment standards expressed only
in terms of allowable pollutant discharge per unit of production or
other measure of operation, the report required by paragraph (a) of this
subsection shall include the user's actual average production rate
for the reporting period.

(5) Notice of potential problems—Including slug-loading. All
categorical and noncategorical industrial users shall notify the
POTW immediately of all discharges that could cause problems to
the POTW, including slug loading, by the industrial user.

(6) Monitoring and analysis—Demonstrate continued compliance.

(a) The reports required in subsection (4) shall contain the results of
sampling and analysis of the discharge, including the flow and the nature
and concentration, or production and mass if requested by the control authority, of
pollutants contained therein which are limited by the applicable
pretreatment standards. The sampling and analysis may be performed by
the control authority in lieu of the industrial user. If the POTW performs the
sampling and analysis in lieu of the industrial user, the user is not required to submit the compliance
certification required under subsections (1) and (3) of this section.
In addition, if the POTW itself collects all the information required
for the report, including flow data, the industrial user is not required to
submit the report.

(b) If sampling performed by an industrial user indicates viola-
tions, the user shall notify the control authority within twenty-four
(24) hours of the occurrence of the violation. The user shall repeat the
sampling and analysis and submit the results of the repeat analysis to the control authority within thirty
(30) days after becoming aware of the violation, except the industrial user is not required to resample if

1. The control authority performs sampling at the industrial user's
facility at least once per month;

2. The control authority performs sampling at the user's
facility between the times when the user performs its initial sampling and the time
when the user receives the results of this sampling.

(c) The reports required in subsection (4) of this section shall be
based upon data obtained through appropriate sampling and
analysis performed during the period covered by the report, which
data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of moni-
toring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(d) All analyses shall be performed in accordance with proce-
dures established by the administrator pursuant to Section 304(h)
of the Act, 33 U.S.C. 1314(h) and contained in 40 C.F.R. Part 136
and amendments thereto, or with other test procedures approved by the administrator. The results of these analyses shall be
consistent with the techniques approved by the administrator. If 40 C.F.R.
Part 136 does not include sampling or analytical techniques for the pollutants in question, or if the administrator determines that the Part 136 sampling and
analytical techniques are inappropriate for the pollutants in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(e) If an industrial user subject to the requirements in subsection (4) of this subsection monitors pollutants more frequently
than required by the control authority, using the procedures prescribed in paragraph (d) of this subsection, the results of this monitoring shall be included in the report.

(7) Reporting requirements for industrial users not subject
to categorical pretreatment standards. The control authority shall require appropriate reporting from those industrial users with
discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control
authority at least once every sixty (60) months, on dates specified by the control authority, a description of the nature, concentration,
and effect of the pollutants required to be reported by the control authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 C.F.R. Part 136
and amendments thereto. If 40 C.F.R. Part 136 does not contain
sampling and analytical techniques for the pollutants in question, or
if the administrator determines that the Part 136 sampling and
analytical techniques are inappropriate for the pollutants in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator. The results of these analyses shall be included in the report.

(8) Semiannual POTW reports. POTWs with approved pre-
treatment programs shall provide the cabinet with a report that
briefly describes the POTW's program activities, including activities of all participating agencies, if more than one (1) jurisdiction is
involved in the local program. The report required by this subsection shall be submitted no later than one (1) year after approval
of the POTW's pretreatment program, and at least semiannually thereafter, and shall include at a minimum, the following:

(a) An updated list of the POTWS industrial users, including
their names and addresses, or a list of dischargers and additives keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user.

(b) The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.

(c) A summary of the status of industrial user compliance with
the reporting period.

(d) A summary of compliance and enforcement activities in-
cluding inspections, conducted by the POTW during the reporting period.

(e) A summary of changes to the POTW's pretreatment pro-
grams that have not been previously reported to the cabinet;

(f) Other relevant information requested by the cabinet.

(9) Notification of changed discharges. All industrial users shall promptly notify the POTW in advance of a substantial change in the volume or character of pollutants in their discharge, including the listed or characterized hazardous wastes for which the industrial user has submitted initial notification under subsection (16) of this chapter.

(10) Compliance schedule for POTWs. The following condi-
tions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by Section 6 of this administrative regulation.

(a) The schedule shall contain increments of progress in the form of specific goals for achievement of events leading to the development and implementation of a POTW pretreatment program. (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment).

(b) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months.

(c) Not later than fourteen (14) days following each date in the
schedule and the final date for compliance, the POTW shall submit a progress report to the cabinet including, as a minimum, whether or not it complied with the increments of progress to be met on the date and, if not, the date on which it expects to comply with the increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. No more than nine (9) months shall elapse between the progress reports to the cabinet.

(11) Signatory requirements for industrial user reports. The
reports required by subsections (1), (3) and (4) of this section shall include the certification statement as set forth in Section 4(10) of this administrative regulation and shall be signed as follows:

(a) By a responsible corporate officer, if the industrial user
submitting the report is a corporation.

(b) For the purpose of this paragraph, a responsible corpo-
rate officer shall be:

1. A president, secretary, treasurer, or vice-president of the
   corporation in charge of a principal business function, or any other
   person who performs similar policy or decision making functions
   for the corporation, or
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2. The manager of one (1) or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate policies.

(b) By a general partner or proprietor if the industrial user submitting the report requested by subsection (1), (3), or (4) of this section is a partnership or sole proprietorship, respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) of this subsection if:
1. The authorization is made in writing by the individual designated in paragraph (a) or (b) of this subsection;
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company, and
3. The written authorization is submitted to the control authority.

(d) If an authorization in paragraph (a) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters, the company, a new authorization satisfying the requirements of paragraph (a) of this subsection shall be submitted to the control authority prior to or at the same time the report is submitted by an authorized representative.

(12) Signatory requirements for POTW reports. Reports submitted to the cabinet by the POTW in accordance with subsection (7) of this section shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if the employee is responsible for overall operation of the POTW.

(13) Provisions governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:
1. The provisions of 18 U.S.C. Section 1001 relating to fraud and false statements;
2. The provisions of Section 3001(c)(4) of the Act, 33 U.S.C. 1316(c)(4), as amended, governing false statements, representation or certification;
3. The provisions of Section 3001(c)(5) of the Act, 33 U.S.C. 1316(c)(5) regarding responsible corporate officers;
4. Recordkeeping requirements;
5. Industrial users of POTWs subject to the reporting requirements established in this section shall maintain records of all information resulting from monitoring activities required by this section. These records shall include samples and the following:
   1. The date, exact place, method, and time of sampling and the names of the persons taking the samples;
   2. The date analyses were performed;
   3. Who performed the analyses;
   4. The analytical techniques or methods used; and
   5. The results of the analyses.

(b) Industrial users or POTWs subject to the reporting requirements established in this section shall retain for a minimum of three (3) years records of monitoring activities and results, whether or not the monitoring activities are required by this section, and shall make the records available for inspection and copying by the cabinet and the regional administrator and POTW, if an industrial user. This period of retention shall be extended during the course of unresolved litigation regarding the industrial user or POTW if requested by the cabinet or the regional administrator.

(c) A POTW to which reports are submitted by an industrial user pursuant to subsections (1), (3), (4), and (7) of this section shall retain the report for a minimum of three (3) years and shall make the report available for inspection and copying by the cabinet and the regional administrator. This period of retention shall be extended during the course of unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program if requested by the cabinet or the regional administrator.

(d) The industrial user shall notify the POTW, the EPA regional waste management division director, and Kentucky Division of Waste Management in writing of a discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. The notification shall include the name of the hazardous waste as so defined in 40 C.F.R. Part 261. If the EPA has not received notification of the discharge, the POTW shall provide the notification to the EPA. If the POTW receives notification from the industrial user that a discharge of hazardous waste has occurred, the POTW shall report to the EPA as required in 40 C.F.R. Part 264. If the POTW receives notification from the industrial user that a discharge of hazardous waste has occurred, the POTW shall report to the EPA as required in 40 C.F.R. Part 264. If the POTW receives notification from the industrial user that a discharge of hazardous waste has occurred, the POTW shall report to the EPA as required in 40 C.F.R. Part 264. If the POTW receives notification from the industrial user that a discharge of hazardous waste has occurred, the POTW shall report to the EPA as required in 40 C.F.R. Part 264.

(e) If new federal regulations are promulgated under Sections 3001 of RCRA, 42 U.S.C. 6921, identifying additional characteristics of hazardous waste or listing additional substances as hazardous waste, the EPA regional waste management division director and the Kentucky Division of Waste Management shall inform the POTW of the change in characteristic or substance.

(f) If a notification is made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous waste generated to the degree it has determined to be economically practical. Section 10. Variances from Categorical Pretreatment Standards and Fundamentally Different Factors (1) Purpose and scope. The U.S. EPA may, on a case-by-case basis, adjust the limits in categorical pretreatment standards, making them either more or less stringent, as they apply to a certain industrial user within an industrial category or subcategory. This adjustment will be done only if factors fundamentally different from those considered by EPA in developing the limit at issue are indicated by data specific to that industrial user. Interested persons believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit specified in the applicable categorical pretreatment standard, may request a fundamentally different factors variance. The request for such a variance may be initiated by the U.S. EPA.

(2) Criteria. (a) General criteria. A request for a variance based upon fundamentally different factors shall be approved by EPA only if:

1. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been requested,

2. Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the 
factors considered by EPA in establishing the standards; and
2. The request for a variance is made in accordance with the procedural requirements in subsections (6) and (7) of this section.
3. The request is allowable if the variance requested is less stringent than required by the standard shall be approved by EPA only if:
   1. The alternative limit requested is less stringent than justified by the fundamental difference;
   2. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under Section 3 of this administrative regulation;
   3. The alternative limit will not result in a nonwater-quality-environmental impact including energy requirements, fundamentally more adverse than the impact considered during development of the prototype standards; and
   4. Compliance with the standards, either by using the technologies upon which the standards are based or by using other control alternatives, would result in either:
      a. A removal cost, adjusted for inflation wholly out of proportion to the removal cost considered during development of the standards, or
      b. A nonwater-quality-environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.
3. Criteria applicable to more stringent limits: A variance request for the establishment of limits more stringent than required by the standard shall be approved by EPA only if:
1. The alternative limit request is no more stringent than justified by the fundamental difference; and
2. Compliance with the alternative limit would not result in either:
   a. A removal cost, adjusted for inflation wholly out of proportion to the removal cost considered during development of the standards, or
   b. A nonwater-quality-environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.
3. Factors considered fundamentally different: Factors which may be considered fundamentally different are:
   a. The nature or quality of pollutant contained in the raw waste load of the user's process wastewater;
   b. The volume of the user's process wastewater and effluent discharge;
   c. Nonwater-quality-environmental impact of control and treatment of the user's raw waste load;
   d. Energy requirements of the application of control and treatment technology;
   e. Age, size, availability, and configuration as these relate to the user's equipment or facilities; processes employed, process changes; and engineering aspects of the application of control technology; and
   f. Cost of compliance with required control technology.
4. Factors which shall not be considered fundamentally different: A variance request or portion of such a request under this section shall not be granted on the following grounds:
   a. The feasibility of installing the required waste treatment equipment within the time the Act allows;
   b. The assertion that the standards cannot be achieved with the appropriate waste treatment facilities installed, if the assertion is based on factors listed in subsection (3) of the section;
   c. The user's ability to pay for the required waste treatment; or
   d. The impact of a discharge on the quality of the POTWs receiving waters.
5. Legal basis: Nothing in this section shall be construed to impair the right of a locality under Section 510 of the Act, 33 U.S.C. 4270 to impose more stringent limitations than required by federal law or this administrative regulation.
6. Application deadline: All requests for a variance and supporting information shall be submitted in writing to the cabinet.
7. The request shall be considered, a request for a variance shall be submitted no later than 180 days after the date on which a categorical pretreatment standard is published in the Federal Register.
8. If the user has requested a categorical determina-
request be approved, to the regional administrator or the regional administrator's delegate.

(f) Review of requests by EPA.

(a) If the regional administrator or the regional administrator's delegate finds that fundamentally different factors do not exist, the regional administrator or delegate will approve the variance and send a copy of that determination to the cabinet, to the POTW, and to the requestor and the industrial user, if they are not the same.

(b) If the regional administrator or the regional administrator's delegate finds that fundamentally different factors do exist, and that a partial or full variance is justified, the regional administrator or delegate will approve the variance. In approving the variance, the administrator or the delegate will:

1. Prepare recommended alternative discharge limits for the industrial user either more or less stringent than those prescribed by the applicable categorical pretreatment standard to the extent warranted by the demonstrated fundamentally different factors;

2. Provide the following information in the regional administrator's written determination:

a. The recommended alternative discharge limits for the industrial user concerned;

b. The rationale for the adjustment of the pretreatment standard, including the reasons for recommending that the variance be granted, and an explanation of how the recommended alternative discharge limits were derived;

c. The supporting evidence submitted to the regional administrator or the regional administrator's delegate;

and

d. Other information considered by the regional administrator or the regional administrator's delegate in developing the recommended alternative discharge limits;

3. Notify the cabinet and the POTW of the regional administrator's determination;

and

4. Send the information described in subparagraphs (1) and (2) of this paragraph to the requestor and to the industrial user if they are not the same.

(g) Request for hearing.

(a) Within thirty (30) days following the date of receipt of the notice of the decision of the administrator's delegate on a variance request, the requestor or other interested persons may submit a petition to the regional administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the industrial user the person shall simultaneously serve a copy of the request on the industrial user.

(b) If the regional administrator declines to hold a hearing and the regional administrator affirms the findings of the regional administrator's delegate, the requestor may submit a petition to the regional administrator for a hearing to the Environmental Appeals Board described in 40 C.F.R. 135, within thirty (30) days of the regional administrator's decision.

Section 11. Confidentiality. (1) Authoritative. In accordance with KRS 224.10-210 and administrative regulations promulgated pursuant thereto, information submitted to the cabinet pursuant to this administrative regulation may be claimed as confidential by the submitter.

(2) POTW. All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.675 to 61.882 and 61.660 to 61.975.

Section 12. Nut-gro-calculation. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section.

(1) Application. Industrial users wishing to obtain credit for intake pollutants shall apply to the control authority. Upon request of the industrial user, the applicable standard shall be calculated on a not basis (i.e., adjusted to reflect credits for pollutants in the intake water) if the requirements of subsection (2) and (3) of this section are met.

(2) Criteria. The industrial user shall demonstrate that the control system it proposes to use to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

(b) Credit for generic pollutants such as BOD, TSS, and oil and grease shall not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants other than the outfall or effluent.

(c) Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this section.

(d) Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 C.F.R. Chapter I, Subchapter N specifically provide that they shall be applied on a not basis.

Section 13. Upset Provision. (1) Effect of an upset. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (2) of this section are met.

(2) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate in a contemporaneous operating log or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause of the upset;

(b) The facility was being operated in a prudent and workmanlike manner and was in compliance with applicable operation and maintenance procedures when the upset occurred;

(c) The industrial user has submitted the following information to the control authority within twenty-four (24) hours of becoming aware of the upset; if this information is provided orally, a written submission shall be provided within five (5) days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance;

(3) Burden of proof. In enforcement proceedings the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) Revocability of the cabinet's consideration of claims of upset. The cabinet shall review claims of noncompliance caused by an upset. Determinations made in the course of the review shall constitute a final agency action subject to KRS 224.10-420. Industrial users shall have an opportunity for a hearing on claims of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(5) User responsibility. If an upset occurs, the industrial user shall control production or any discharge to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. The requirement applies in the situation if, among other things, the primary source of pollution to the treatment facility fails or is reduced or lost.

Section 14. Bypass. An industrial user shall comply with the section in addressing bypasses.

(1) Bypass. Not violating applicable pretreatment standards or requirements. An industrial user may allow a bypass to occur if it will not cause a pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. Bypasses shall not be subject to subsections (2) and (3) of this section.

(2) Notice. An industrial user knows, in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible.
An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(3) Prohibition of bypass.
(a) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:
1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention or removal of untreated waste, or maintenance during normal periods of equipment downtime. The condition shall not be satisfied if adequate backup equipment should have been installed in the course of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance.
3. The industrial user submitted a notice as required under subsection (2) of this section.
(b) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three (3) conditions listed in paragraph (a) of this subsection.

Section 15. Modification of POTW Pretreatment Programs. (1) General. Either the cabinet or a POTW with an approved POTW pretreatment program may initiate program modifications at any time to reflect changing conditions at the POTW. Program modification is necessary if there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section 8 of this administrative regulation.

(2) Substantial modifications. Substantial modifications include:
(a) Modifications that relax POTW legal authorities as described in Section 6(a)(4) of the administrative regulation, except for modifications that directly affect the revision to this administrative regulation or to 40 C.F.R. Chapter I, Subchapter N, and are required as part of Section 4 of this subsection.
(b) Modifications that change local limits, except for the modifications to local limits for pH and recalculations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings of the pollutant, which are reported pursuant to subsection (4) of this section. Maximum allowable industrial loading means the total mass of a pollutant that all industrial users of a POTW or a subgroup of industrial users identified by the POTW may discharge pursuant to limits developed under Section 3(3) of the administrative regulation.
(c) Changes to the POTW's control mechanism, as described in Section 6(4)(a) of this administrative regulation;
(d) A decrease in the frequency of self-monitoring or reporting required of industrial users;
(e) A decrease in the frequency of industrial user inspections or sampling by the POTW;
(f) Changes to the POTW's confidentiality procedures; or
(g) Other modifications designated as substantial modifications by the cabinet on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program, shall result in an increase in pollutant loadings at the POTW, or shall result in modifications to existing source limitations, requiring on-site monitoring of industrial users of the POTW.

(3) Approval procedures for substantial modifications.
(a) The POTW shall submit to the cabinet a statement of the basis for the desired program modification, a modified program description pursuant to Section 7(2) of this administrative regulation, or other documents the cabinet determines to be necessary under the circumstances.
(b) The cabinet shall approve or disapprove the modification based on the requirements of Section 6(4) of this administrative regulation and the procedures in Section 5(2) through (8) of this administrative regulation and in paragraphs (a) and (d) of this subsection.

Section 16. Pretreatment Program Reinvention Pilot Projects Under Project XL. The cabinet may allow any POTW that has a final Project XL agreement to implement a pretreatment program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this administrative regulation. The POTW shall submit the alternative requirements as a substantial program modification in accordance with the procedures outlined in Section 15 of this administrative regulation. The approved modified program shall be incorporated as an enforceable part of the POTW's KPDES permit. The cabinet shall include a reassessment clause in the POTW's KPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program if the cabinet determines that the primary objective of the local pilot pretreatment program are not being met or if the Project XL agreement expires or is otherwise terminated.

Section 17. Federal Regulations Adopted Without Change. The cabinet shall be governed by the following federal regulations for the indicated subject matter; the federal regulations are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., except holidays, at the Kentucky Division of Water, 14 Reily Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C., except as noted:
(1) 40 C.F.R. 125.15(c), "Environmental Appeals Review Board", as in effect on July 1, 2001, for the appeals of the U.S. EPA's granting of removal credits.
(2) 40 C.F.R. Part 25, "Public Participation in Programs Under the National Contingency Plan and Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act", as in effect on July 1, 2001, for public participation for enforcement of pretreatment standards.
(3) 40 C.F.R. Part 130, "Water Quality Planning and Management", as in effect on July 1, 2001, for regional facility plans.
(4) 40 C.F.R. Part 131, "Water Quality Standards" as in effect on July 1, 2001, for water quality management plans.
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(6) 40 C.F.R. Part 136, "Test Procedures for the Analysis of Pollutants", as in effect on July 1, 2001, for sampling and analysis techniques;
(6) 40 C.F.R. Part 268, "Criteria for Municipal Solid-Waste Landfills", as in effect on July 1, 2001, for sewage sludge standards;
(7) 40 C.F.R. Part 261, "Identification and Listing of Hazardous Wastes", as in effect on July 1, 2001, for hazardous waste determinations;
(8) 40 C.F.R. Chapter I, Subchapter N, Parts 401 et seq., "Federal Emission Limitations and Standards and New Source Performance Standards", as in effect on July 1, 2004;
(9) 40 C.F.R. Chapter I, Subchapter N, Part 404, "Provisions-Guidance Memorandum", as in effect on July 1, 2001, for claiming consistent removal for correcting conditions resulting in untreated discharges by a POTW;
(10) 40 C.F.R. Part 403, Appendix D, "Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Waste Stream Formula", as in effect on July 1, 2001, for the list of process waste streams that were or could have been entirely exempted by the U.S. EPA; and
(11) 40 C.F.R. Part 403, "Standards for the Use or Disposal of Sewage Sludge", as in effect on August 4, 1990, for the eligibility of specific pollutants for removal credits.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 9, 2008
FILED WITH ULC: July 14, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 PM. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. No notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601 phone (502) 564-3410 fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Sandy Grzeszcyk, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does; This administrative regulation implements 33 U.S.C. Section 1311, 1314, 1317, 1318, 1319, 1342, and 1345, as relates to the Cabinet’s pretreatment program. It establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants that pass through or interfere with treatment processes in publicly owned treatment works (POTWs) or which may contaminate sewage sludge. Its objectives are to prevent the introduction of pollutants which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into POTWs that will pass through the treatment works or otherwise be incompatible with the treatment works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludge.
(b) The necessity of this administrative regulation: KRS 224.16-050 authorizes the Cabinet to implement the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). KRS 224.73-120 authorizes the Cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, record keeping and reporting, effluent limitations and pretreatment standards for the introduction into such treatment works of pollutants. All NPDES delegated states must have compatible state regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.16-050 which authorizes the Cabinet to implement the Federal Water Pollution Control Act. This regulation provides specific requirements for permitting discharges into Public Owned Treatment Works (POTWs). This regulation is consistent with the pollution prevention goals of KRS Chapter 224.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific requirements for industrial users, the Control Authority (POTW), and the Approval Authority (Cabinet). The regulation establishes specific requirements for categories of industrial users. The regulation references governing federal regulations relevant to the regulation of pretreatment programs.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will correct and update the regulation to make it consistent with the corresponding federal regulations. The proposed amendment reduces the sampling, monitoring and reporting burden on certain categories of industrial users, particularly those industrial users that are non-significant categorical industrial users. This amendment attains consistency with federal regulations by directly citing the governing federal regulations. The amendment incorporates the thirteen mandatory changes to the federal regulations that are a direct result of the 2005 federal amendments.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to achieve compliance with federal regulations.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150 which authorizes the Environmental and Public Protection Cabinet to implement the Federal Water Pollution Control Act. This regulation provides specific requirements for permitting discharges into Public Owned Treatment Works (POTWs). The proposed amendment continues to provide for water pollution control as provided in KRS Chapter 224.
(d) How the amendment will assist in the effective administration of the statutes: The amendment removes discrepancies between current state and federal regulations. The amendment will aid in carrying out the goals of KRS Chapter 224.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects businesses that directly discharge to waters of the Commonwealth. Industrial users that are subject to pretreatment standards due to the size or composition of their discharge to public owned treatment works (POTWs) are regulated by a local control authority. The local control authority is typically the POTW. The control authority is regulated by the Cabinet via the KPDES permitting program. There are approximately 700 regulated industrial users operating under 84 pretreatment programs. After analysis of the current types of permits, the regulation is expected to affect the following number of entities: Individuals: None. Businesses: Approximately 650 through local permits from the POTW. Organizations: None. State or local government: Sixty-four through KPDES permits for POTWs.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to implement and report upon any best management practices (BMPs) that are part of their local permit.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals and organizations are not affected by this amendment. Businesses are not expected to experience any significant additional cost. This amendment is not expected to create - 376 -
any new groups of regulated industry. Those industries that have requirements under this regulation but are considered nonsignificant users of the POTW may see a reduction in costs. Those industries that must implement BMP requirements as a result of this amendment and are likely to see similar costs because the BMPs are likely to be similar to practices that industries are already utilizing to meet numeric pretreatment requirements. Additionally, because these requirements are already in federal requirements, amending this regulation for the POTW will create no additional economic burden upon businesses. State and local government will see a modest reduction in cost due to less monitoring and sampling of non-significant users of the POTW.

(c) As a result of compliance, what benefits will accrue to the community affected by this regulation will have a smaller compliance burden for those entities that qualify as non-significant users. Regulated entities will not be confused by inconsistency between state and federal regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost is anticipated.
(b) On a continuing basis: No additional cost is anticipated
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in funding because of this amendment.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are expected to support this amendment.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.
(f) TIERING: Is tiering applied? To the extent that corresponding federal regulations provide for tiering, these amendments are tiered. The federal regulations provide tiered regulatory requirements through the identification of classes of industrial users of the POTW. The industrial classes consist of non-significant users, categorical users, and significant users. Program requirements and limitations depend upon the size and the specific industrial category of the industrial user. Tiering of fees for industrial users applies if the POTW seeks construction grants because the POTW must demonstrate that local industrial user fees are proportional to the demands upon the POTW.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects publicly owned treatment works that must have a pretreatment program for industrial users of the POTW. This amendment affects cities and counties.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224.
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 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 amendment will not generate any additional revenue in subsequent years.
   (c) How much will it cost to administer this program for the first year? There will be no additional cost.
   (d) How much will it cost to administer this program for subsequent years? There will be no additional cost.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. This regulation establishes state standards to match corresponding federal regulations and statutes.
3. Minimum or uniform standards contained in this federal mandate. The Clean Water Act requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, 33 U.S.C. 1251-1387.
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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Division of Technical Services
(Amendment)

502 KAR 15:010. Accident reports.

RELATES TO: KRS 189.635
STATUTORY AUTHORITY: KRS 15A.160, 189.635
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2003-064, effective December 16, 2003, reorganized the Justice Cabinet and placed the Department of State Police under the Justice and Public-Safety Cabinet]. KRS 189.635 requires the Department of Kentucky State Police/Jurisdictions and Public Safety Cabinet to establish a reporting system for all vehicle accidents, including reporting procedures, fee schedule and forms. This administrative regulation establishes the reporting system and fee schedule.

Section 1. The "Uniform Police Traffic Accident Report" form published by the Department of Kentucky State Police (Justice and Public Safety Cabinet) shall be the official vehicle accident report form for all law enforcement agencies in Kentucky.


Section 3. A law enforcement agency whose officers make a traffic accident report is that traffic accident report received by the originating agency with respect to the report and shall retain a copy of the report. Responsibility for providing copies of traffic accident reports to the parties authorized by statute shall remain with the originating agency.

Section 4. A law enforcement agency receiving a vehicle accident report pursuant to KRS 189.635 shall [within ten (10) days thereof] forward the original copy of the report to the "CRASH Section, Criminal Identification and Records Branch" Department of Kentucky State Police, Justice and Public Safety Cabinet, Frankfort, Kentucky 40601, in envelopes provided by the cabinet within ten (10) days of receiving the report. The report shall be mailed flat
and not folded.

Section 5. Fees for Vehicle Accident Reports. (1) Vehicle Accident Reports may be obtained by authorized parties pursuant to KRS 189.635 upon payment of the following fees:
(a) Paper copy: five ($5) dollars; and
(b) Reports obtained via the Kentucky State Police website: ten ($10) dollars.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Kentucky Uniform Police Traffic Collison Report, Form KSP 74, Revised 12/2000";
(b) "Kentucky Uniform Police Traffic Accident Report Manual, July 2000";
(c) "Manual on Classification of Motor Vehicle Traffic Accidents, 6th edition"; and
(d) "Vehicle accident report envelope, 1st edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner
APPROVED BY AGENCY: July 15, 2008
FILED WITH LRC: July 25, 2008 at 9 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2008, at 2 p.m. at the Kentucky State Police Headquarters, 919 Versailles Rd., 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 September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kentucky State Police, Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures and fees for obtaining a vehicle accident report in paper form and online.
(b) The necessity of this administrative regulation: To establish a fee schedule for obtaining vehicle accident reports in paper form and online and to clarify that only parties authorized by statute are entitled to the vehicle accident reports.
(c) How this administrative regulation conforms to the content of the authorizing statutes: See answer to (1)(c).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See answer to (1)(b).
(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: See answer to (1)(b).
(b) The necessity of the amendment to this administrative regulation: The 2008 GA enacted a new section of KRS 189.635 that came into effect July 15, 2008. This regulation implements the fees and designates the parties entitled to receive the reports.
(c) How the amendment conforms to the content of the authorizing statutes: See answer to (1)(b).
(d) How the amendment will assist in the effective administration of the statutes: See answer to (1)(b).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons statute-fully eligible to receive vehicle accident reports. This includes insurance companies and written designers, attorneys, persons involved in a vehicle accident, parents, and parties to litigation.

(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: Pay $5 per paper copy for the vehicle accident report or $10 to purchase online.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): See answer to (4)(a).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More expeditious service in obtaining vehicle accident reports online.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police.

3. Identify each state or federal statute or regulatory that requires or authorizes the action taken by the administrative regulation. KRS 189.635

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 fiscal year: 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? Approximately $500,000.
(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? Revenue all goes to Kentucky State Police.
(c) How much will it cost to administer this program for the first year? No additional costs.
(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): Expenditures (+/-): Other Explanation:
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Division of Technical Services
(Amendment)


RELATES TO: KRS 17.147, 17.150, 17.151, 17.152, 17.160


NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.115 provides that the Justice Cabinet shall cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification. KRS 17.147(6) provides that the Department of State Police shall supply data, at their request, to participating federal, bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. Further, KRS 17.150(6) requires the Secretary of Justice to adopt administrative regulations to carry out the provisions of the criminal history record information system. This administrative regulation establishes the conditions under which the criminal history record information system may disseminate data.

Section 1. Dissemination of Criminal History Record Information (CHRI). Use of CRHI disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given. An agency or individual shall not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself. Dissemination of CHRI shall be regulated by the specific category of criminal history record information. Those categories shall include:

1. Nonconviction data. Dissemination of nonconviction data shall, with the exception of the computized Kentucky State Police files accessed by an open record request directly to the Department of State Police, be limited, whether directly or through an intermediary, to:

   a. Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment;

   b. Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel, Justice Cabinet;

   c. Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of State Police, to provide services required for the administration of criminal justice pursuant to that agreement.

2. Conviction data. Dissemination of conviction data shall be limited as follows:

   a. Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order. This restriction shall not apply to juveniles who were tried as an adult.

   b. Criminal history record checks for employment purposes. Criminal history record information of a conviction nature may be disseminated to potential employers of persons. To obtain criminal history record information regarding convictions, a prospective employee/volunteer through the potential employer shall complete a form prescribed by Records which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the potential employer, signature of the prospective employee/volunteer, and a witness signature. The form shall also include sex, race, date of birth, Social Security number and previous addresses of the prospective employee/volunteer.

   c. Unemployment criminal records checks. Criminal history record information of a conviction nature may be disseminated to individuals, entities, and/or organizations in regard to emigration and/or housing. To obtain criminal history record information regarding convictions, an individual shall complete a form prescribed by Records which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the recipient individual, entity or organization, signature of the individual requester, and a witness signature. The form shall also include sex, race, date of birth, Social Security number and previous addresses of the individual applicant. The applicable forms are:

      (i) Request for KSP Conviction Records/Housing, 10/03 edition; and
      (ii) Request for KSP Conviction Records/Emigration, 10/03 edition.

3. In regard to employment criminal records checks, the prospective employer shall be responsible for the completion of the appropriate form as indicated in paragraph (b) of this subsection and shall submit a check/money order for twenty ($20.00) dollars, made payable to the Kentucky State Treasurer.

4. If the criminal record check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check/money order in the amount of twenty ($20.00) dollars, made payable to the Kentucky State Treasurer.

Section 2. As outlined in 502 KAR 30:040, the computized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall log all disseminations of CHRI. The log shall contain at least the following information: the name of the agency and individual receiving CHRI, the date of release, the individual to whom the CHRI relates, the items of CHRI released, and, in the case of secondary dissemination, the agency which provided the CHRI. Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRI dissemination.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

   a. "Request for Conviction Records - Employment Professional License", 504 edition;

   b. "Request for Conviction Records/Child Care", 10/03 edition;

   c. "Request for Conviction Records/Adoptions and Foster Homes", 10/03 edition;

   d. "Request for Conviction Records/Lottery", 10/03 edition;

   e. "Request for Conviction Records/Long-Term Care Facility", 10/03 edition;

   f. "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/03 edition;

   g. "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition;

   h. "Request for Conviction Records/Miners", 10/03 edition;

   i. "Request for Conviction Records/Nonpublic Schools", 10/03 edition;

   j. "Request for Conviction Records/Board of Education", 10/03 edition;

   k. "Request for Conviction Records/Legislative Research Commission", 10/03 edition;

   l. "Request for Conviction Records/Housing", 10/03 edition;

   m. "Request for Conviction Records/Emigration", 10/03 edition;


2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Post 12 at 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-2221, Monday through Friday from 8 a.m. until 4:30 p.m.
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

RODNEY BREWER, Commissioner
APPROVED BY AGENCY: July 15, 2008
FILED WITH LRC: July 15, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 2, 2008, at 2 p.m., at the Kentucky State Police Headquarters, 919 Versailles Rd., 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 September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Emily Perkins
Kentucky State Police

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures and fees for obtaining a criminal background check.
(b) The necessity of this administrative regulation: To alert the public to the procedures and fees for obtaining a criminal background check.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky State Police is required to promulgate administrative regulations to establish the policies for disseminating criminal background information.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides the public with the procedures, fees and a list of documents for properly requesting a criminal background check.

(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 raises the fees for obtaining criminal history background checks for noncriminal purposes to allow the Kentucky State Police to recoup the costs of providing the background checks.
(b) The necessity of the amendment to this administrative regulation: Kentucky State Police faces continued rising costs. This increase is necessary to offset the increasing cost of processing records.
(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 needing, and employers requiring, a criminal history background check for employment including: law enforcement; nominees for appointments by the governor; child care centers; fire departments; ambulance services; rescue squads; vendors and businesses doing business with the state lottery; department of education; school districts; school volunteers, foster parents; relative care-givers; adult household members in a foster family or relative care-giver family; any potential employee of the Department of Mental Health and Mental Retardation; any potential employee of an assisted living, nursing home or care home run or managed by the Department for Health and Family Services; person obtaining a license to be an explosives blaster; persons obtaining a commercial driver's license; nurse's; persons applying for a license to carry a concealed deadly weapon; physicians, lawyers, emergency medical personnel; real estate brokers and agents; persons attempting to obtain a license to administer detection of deception examinations; telecommunicators; volunteers seeking to teach hunter safety education; persons seeking to work in the horse industry; taxicab drivers; mine safety inspector; mine safety analyst; electrical inspector; mine safety instructor; insurance agents; insurance underwriter; insurance consultants; solicitors, alcohol and drug abuse counselors; potential adoptive parents and other employers. The Kentucky State Police processes approximately ___ applications per year. This is approximately the number of individuals and businesses who will be impacted by this change.

(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: Pay an additional ten (10) dollars per application.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pay an additional ten (10) dollars per application.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky State Police will be able to continue complying with its statutory mandate to provide these services in a timely fashion.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment increases fees.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. If increased the fees from ten (10) dollars per application to twenty (20) dollars per application to allow the Kentucky State Police to recoup costs associated with managing the program.

(9) TIERING: Is tiering applied? Tiering was not applied because all persons applying for a criminal background check 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? All employers requiring a criminal history background check for employment including: law enforcement; nominees for appointments by the governor; child care centers; fire departments; ambulance services; rescue squads; vendors and businesses doing business with the state lottery; department of education; school districts; school volunteers, foster parents; relative care-givers; adult household members in a foster family or relative care-giver family; any potential employee of the Department of Mental Health and Mental Retardation; any potential employee of an assisted living, nursing home or care home run or managed by the Department for Health and Family Services; person obtaining a license to be an explosives blaster; persons obtaining a commercial driver's license; nurse's; persons applying for a license to carry a concealed deadly weapon; physicians, lawyers, emergency medical personnel; real estate brokers and agents; persons attempting to obtain a license to administer detection of deception examinations; telecommunicators; volunteers seeking to teach hunter safety education; persons seeking to work in the horse industry; taxicab drivers; mine safety inspector; mine safety analyst; electrical inspector; mine safety instructor; insurance agents; insurance underwriter; insurance consultants; solicitors, alcohol and drug abuse counselors; potential adoptive parents and other employers.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.150

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?

(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
Forensic Laboratory
(Amendment)


RELATES TO: KRS 17.170, 17.171, 17.172, 17.173, 17.174, 17.175, 10 U S C 1555, 42 U S C 14132, 42 U S C 14131
STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.170, 17.175, 10 U S C 1555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.175 requires the Kentucky State Police to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Authorized personnel" means a person who has completed the Department of Kentucky State Police approved training for DNA sample collection.

(2) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone.

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

(4) "DNC" means deoxyribonucleic acid.

(5) "DNA database" means the database that is part of the federal Combined DNA Index System maintained by the Kentucky State Police under agreement with the Federal Bureau of Investigations and which contains the DNA profiles for qualifying offenders, crime scene specimens, unidentified human remains, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

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

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

(8) "DNA Database Supervisor" means a person designated as the point of contact with the Federal Bureau of Investigations to insure the proper operation and security of the database.

(9) "DOC" means the Department of Corrections.

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

(11) "FDII" means Federal Bureau of Investigation.

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

(13) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(14) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a DNA [blood] sample from a qualifying offender by (either by hypodermic needle) finger prick, or a biological sample for the purpose of obtaining a DNA profile.

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

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

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

(3) Each offender DNA collection kit for the collection of a blood tube sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)*, KSP Form No. 47-F," a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)*, KSP Form No. 47-A and for the "Offender DNA Collection Kit Information Sheet (buccal swab method)*, KSP Form No. 47-B." The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample or biological samples on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed accurately with as much biographical and offenses-related information available concerning the qualifying offender, and shall have space for the qualifying offender's left and right thumbprints shall be taken when the sample is collected, except in the instance of amputation or injury to the qualifying offender's thumb when the other digit shall be printed per the instructions on the Offender DNA Collection Kit Information Sheet. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the DNA [blood] sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender. The DNA sample shall be taken by DOC or DJJ authorized personnel and not self-collected by the qualifying offender.

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

Section 3 Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request for Examination," KSP Form No. 26.

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

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

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion in DNA Database
(1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26.

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

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

Section 5. Collection of DNA Samples from Crime Scenes for Inclusion in DNA Database
(1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

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

Section 6. Quality Assurance Standards for DNA Database
(1) The proficiency of examiners conducting DNA analysis for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(2) (14). Only DNA profiles obtained as a result of DNA analysis shall be entered in the DNA database.[conducted-in-conformance with the quality-assurance standards set forth in the KSP-Forensic Laboratory DNA Quality Assurance Manual] The Forensic Biology/DNA Database Quality Assurance Manual]

Section 7. DNA Database Usage, Access and Security
(1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.130.

(2) DNA database shall only be accessed as approved by the DNA Database Supervisor by Kentucky State Police employees who show proficiency in DNA testing and the DNA database, maintain continuing education hours pursuant to KSP forensic lab policy and federal requirements. The DNA Database Supervisor may provide KSP interns with limited access to the DNA database pursuant to KSP forensic lab policy.

(3) All data and information generated by the DNA Database are confidential.

(4) Searches shall be conducted for law enforcement, criminal justice agencies, or governmental forensic science laboratories approved by the DNA Database Supervisor pursuant to federal guidelines.

(5) Access to the DNA Database shall be through computers that are unable solely for accessing the DNA Database by authorized users and are located in areas secured by the Kentucky State Police (security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories DNA Database Manual)

Section 8. Incorporation by Reference
(1) The following material is incorporated by reference:
(a) "Offender DNA Sample Information Sheet (blood tube method)." KSP Form No. 47-M, May 2003.
(b) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)" KSP Form No. 47-A, January 2006.
(b)(6): "KSP Request For Evidence Examination." KSP Form No. 26, March 2001;
(c) "Defendant DNA Sample Information Sheet (blood tube method)." KSP Form No. 47-May 2003;
(d) "KSP Forensic Laboratories - The Forensic Biology/DNA Database Quality Assurance Manual, January 16, 2007;
(f) "Offender DNA Collection Training Program for Trainers", KSP Form No. 132, June 2008.
(g) "Offender DNA Collection Training Program for Collectors", KSP Form No. 140, June 2008.
(h) "Offender DNA Collection Training Program", KSP Form No. 141, June 2008.
(i) "Offender DNA Collection Kit", KSP Form No. 47-B, May 2008.
(j) "Offender DNA Collection Kit", KSP Form No. 47-B, May 2008.

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

RODNEY BREWER, COMMISSIONER
APPROVED BY AGENCY: June 27, 2008
FILED WITH LRC: July 1, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2008, at 1 p.m. at the Kentucky State Police Headquarters, 919 Versailles Rd., 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 September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 693-6300, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Emily Perkins
(1) Provide a brief summary of:
(a) What this administrative regulation does: Amends the procedures for collecting specimens and adding them to the centralized DNA database for the Commonwealth of Kentucky and delineates the procedures for maintaining the database. This regulation also removes internal policy manuals from the regulation because these manuals do not directly impact the subject matter of the regulation or any aspect that will affect the public but dictate the operation of the database.
(b) The necessity of this administrative regulation: The 2008 General Assembly amended DNA collection necessitating the changes in the regulation with an emergency clause making the statute effective July 1, 2006.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It clarifies that biological DNA samples may be collected by the Department of Juvenile Justice, Prosecution and Parole; and Department of Corrections. Allows persons other than medical personnel to collect biological samples less invasive means than drawing blood samples. It also provides for collecting samples from all felons currently incarcerated and all sex offenders.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It allows the Kentucky State Police to accept biological DNA samples other than blood provides for collecting samples from all felons and sex offenders; and allows properly trained authorized personnel to collect the samples.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: Allows Department of Juvenile Justice; Probation and Parole; and Department of Corrections to collect biological samples from all felons in custody and sex offenders by means other than drawn blood. Provides for authorized personnel to collect the biological DNA samples.

(c) The necessity of the amendment to this administrative regulation: KRS 17.175 was amended by the 2008 General Assembly with an emergency clause making it effective July 1, 2008.

(c) How the amendment conforms to the content of the authorizing statutes: See answer (a) to this section.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky State Police; Department of Juvenile Justice; Probation and Parole; and Department of Corrections.

(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: Personnel will be trained by the Kentucky State Police and all DNA collection kits will be provided by the Kentucky State Police. The entities will be required to identify personnel who will be trained to collect the DNA samples.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Marginal costs to other agencies as they will only be required to pay personnel to receive training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Rapid identification of criminal suspects by allowing law enforcement to initiate an investigation through entering persons into the DNA database.

(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: All costs will be absorbed by the Kentucky State Police.

(e) (a) How will this administrative regulation establish any fees or directly or indirectly increase any fees: It does not.

(f) TIERING: Is tiering applied? Tiering is not applied because all felons and sex offenders are treated identically.

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 Police; Department of Juvenile Justice; Probation and Parole; and Department of Corrections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 10 U.S.C. 1565; 42 U.S.C. 14131, 14132.

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? Appx. $1,279,260

(d) How much will it cost to administer this program for subsequent years? Appx. $351,650

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:

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.880 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from Interstate, parkway, and federal-aid primary highways. KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices that are no longer in compliance with state law or administrative regulation. KRS 177.890 authorizes the Commissioner of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to Interstate, defense, and federal-aid primary highways within the state. Compliance with the "Highway Beautification Act", 23 U.S.C. Section 131 is required to receive federal highway funds. Control of outdoor advertising devices adjacent to the national highway system is required by 23 U.S.C. Section 131. 23 U.S.C. Section 131(d) conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices which are more stringent than required by the general federal mandates. (Commonwealth v. Q.C.I.G., Inc., Ky., 837 S.W.2d 749 (1992) ruled that the exemption to the billboard advertising prohibition established by KRS 177.880(4) did not require a commercially or industrially developed area in which the billboard was located be zoned commercial or industrial if the billboard otherwise complied with applicable local zoning ordinances.)

Section 1. Definitions. (1) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device has:

(a) Not displayed any advertising matter;

(b) Displayed obsolete advertising matter; or

(c) Needed substantial repairs.

A notice that the device for sale, rent, or lease shall not be discontinued is advertising matter.

(2) "Activity boundary line" means the demarcation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential to the primary business activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(3) "Advertised" or "advertising" means as defined in KRS 177.8305.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for other companies or individuals.

(6) "Centerline of the highway" means a line equidistant from
the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.630(9).

(8) "Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:
(a) Leasing of property for residential purposes;
(b) Agricultural activity or animal husbandry; or
(c) Operation or maintenance of an advertising device.

(9) "Commercially or industrially developed area" means:
(a) Any area within 100 feet (30.5 meters) of, and including any area where the electronically changeable message center for advertising on-premise activities or products.
(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities if performed as an incident to:
(a) The change of an advertising message; or
(b) Customary maintenance; or
(c) Repair of an advertising device.

(16) "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.630(3) and 23 U.S.C. 103(b) and as it existed on June 1, 1991.

(17) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message or symbol on the device.

(18) "Interstate highway" means as defined in KRS 177.630(2) and 23 U.S.C. 131(t).

(19) "Intervening period" means a pattern of changing light intensity, other than that achieved with immediate, fade, or dissolve transition, where any message remains static for at least four (4) seconds.

(20) "Legible" means capable of:
(a) Being read without visual aid by a person of normal visual acuity; or
(b) Conveying an advertising message to a person of normal visual acuity.

(21) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include cart roads, frontage roads, turning roads, access ramps, or parking areas.

(22) "National highway system" or "NHS" means the Kentucky highways defined in 23 U.S.C. 103 which for the purpose of outdoor advertising shall exclude the highways which are part of the interstate, parkway, or FAP system of highways.

(23) "Nonbillboard off-premise advertising device" means, as it is applicable to FAP and NHS highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(24) "Nonconforming advertising device" means an off-premise advertising device that was lawfully erected but:
(a) Does not comply with the provisions of a subsequent:
1. State law;
2. Administrative regulation;
(b) Later fails to comply with state law or administrative regulation due to changed conditions similar to the following:
1. Zoning change;
2. Highway relocation;
3. Highway reclassification;
4. Change in a restriction on size, spacing or distance.

(25) "Official sign" means a sign:
(a) Located within the highway right-of-way; and
(b) Installed by or on behalf of:
1. The Department of Highways; or
2. Another public agency having jurisdiction; and
(c) Which meets one (1) of the following purposes:
1. Denotes the location of underground utilities;
2. Is required by a federal, state, or local government to delineate the boundaries of a:
   a. Reservation;
   b. Park; or
   c. District;
3. Identifies the street or highway;
4. Controls traffic or
5. Is required by state law.

(26) "On-premise advertising device" means an advertising device that contains a message relating to an activity conducted on the ground and services within the boundaries of the property on which the device is located. It does not mean a sign which generates rental income.

(27) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to an advertising device, a parkway shall be considered the equivalent of an interstate highway.

(28) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(29) "Primary business or activity" means that the sale of one product or a business activity which takes precedence over other product sales or business activities.

(30) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 500 feet (152.4 meters) or 200 feet (61 meters) from the right-of-way of the interstate, parkway, NHS, and FAP highways and those areas which are outside urban area boundary lines and beyond 600 feet (182.9 meters) from the right-of-way of an interstate, parkway, NHS, or FAP highway within the Commonwealth. If this highway terminate at a state boundary which is not perpendicular or normal
to the center line of the highway, "protected area" also means all of
these areas inside the boundaries of the Commonwealth which are
adjacent to the edge of the right-of-way of an interstate highway in
an adjoining state.

(31)(341) "Public service message" means a message pertain-
ing to an activity or service which is performed for the benefit of the
public and not for profit or gain of a particular person, firm or corpo-
ration or information such as time or temperature.

(32)(341) "Routine change of message" means, as it relates to
a nonconforming advertising device, the message change on an
advertising device from one (1) advertised product or activity to
another. This includes the lamination or preparation of the existing
patches for facing the new product or factors changing messagem-
ents when this is the normal operating procedure of a company.

(33)(341) "Routine maintenance" means, as it relates to a non-
conforming advertising device:
(a) The maintenance of an advertising device which is limited
to replacement of nuts and bolts, nailing, riveting or welding, clean-
ing and painting, or manipulating to level or plumb the device;
(b) The routine change of message; and
(c) The lamination or preparation of existing panels or facings
at a location other than that of the advertising device.

(d) Routine maintenance shall not mean:
1. Adding guys or struts for the stabilization of the device or
   substantially changing the device; or
2. Replacement or repair of panels, poles, or facings or the
   addition of new panels, poles, or facings;

(34)(341) "Traveled way" means the portion of a roadway dedi-
cated to the movement of vehicles, exclusive of shoulders.

(35)(341) "Tuming roadway" means a connecting roadway for
traffic, turning between two (2) intersecting legs of an interchange.

(36)(341) "Unzoned commercial or industrial area" means as
defined in KRS 177.630(8).

(37)(341) "Urban area" means as defined in KRS 177 830(10).

(38)(341) "Visible" means capable of being seen, whether or
not visible or identifiable without visual aid by a person of normal
visual acuity and erected for the purpose of being seen from the
traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs
allowed. An advertising device shall not be erected or maintained
within or over the state-owned highway right-of-way except a direc-
tional or other official sign or signal erected by or on behalf of the
state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size
limitations) may be allowed on state-owned highway right-of-way:
(a) Directional and other official device including a sign or de-
   vice placed by the Department of Highways;
(b) A sign or device, limited in size to two (2) square feet
   (0.02 square meters), denoting the location of underground
   utilities; or
(c) A sign, limited in size to 150 square feet (thirteen and
   ninetenths (13.9) square meters), erected by a federal, state, or local
government to delineate boundaries of a reservation, park, or dis-

Section 3. General Conditions Relating to Advertising Devices.
The requirements of this section shall apply to an advertising de-
vice on an interstate, parkway, NHS, and FAP highway.

(1) FHWA/Kentucky agreement for the control of outdoor ad-
vertising.

(a) An advertising device which is visible from an interstate
highway, parkway, NHS, or FAP highway shall be governed by the
provisions of the agreement between the Kentucky Department of
Highways and the Federal Highway Administration which was ex-
cuted on December 23, 1971.

(b) This agreement is allowed [authorized] by KRS 177.890 and
23 C.F.R. Part 1.35 and required by 23 C.F.R. Parts 190 and 750.

(2) Advertising device allowed if not visible. An advertising
device which is not visible from the main traveled way of the inter-
state, parkway, NHS, or FAP highway shall be allowed in protected
areas.

(3) Visible from more than one (1) highway. If an advertising
device is visible from more than one (1) interstate, parkway, NHS,
or FAP highway on which control is exercised, the appropriate
provisions of this administrative regulation or KRS 177.890 through
177.890 shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-
 premise, nonconforming, but otherwise legal, advertising device
may continue to exist until just compensation has been paid to the
owner, if it is:
(a) Not destroyed, abandoned or discontinued;
(b) Subjected to only routine maintenance;
(c) In conformance with local zoning or sign or building restric-
tions when erected (at the time of the erection); and
(d) Noncompliance with the provisions of Section 4 (3) of this
administrative regulation and KRS 177.863.

(5) Nonconforming maintenance on a nonconforming device. Per-
formance of other than routine maintenance on a nonconforming,
but otherwise legal, advertising device shall cause it to lose its
legal status and to be classified as illegal.

(5) Vandalized nonconforming device.

(a) The owner of a nonconforming, but otherwise legal, adver-
sising device destroyed by vandals, or other criminal or tortuous
act may apply to the Department of Highways to re erect the
advertising device in kind.

(b) The application for the reerection of the advertising device
shall:
1. Be on Transportation Cabinet Form TC 99-31; and
2. Contain the following:
   (a) Plans and pictures showing the proposed new structure to
       be as exact a duplicate of the destroyed nonconforming advertising
device as possible, including the same number of poles, type of
       stanchion, supports, material of poles or stanchion, and material of
       facing;
   b. Sufficient proof that the destruction was the result of vandal-
      ism or criminal or tortuous act;
   c. Ownership of the advertising device;
   d. Dimensions of the destroyed advertising device;
   e. Material used in erection of the destroyed advertising device;
   f. Durability of the new device;
   g. Stanchion type; and
   h. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to
reconstruct until all of the conditions have been met.

(d) The owner of the vandalized nonconforming advertising
device shall not re erect the advertising device until a notice to re-
construct has been issued by the Department of Highways.

(7) Required measuring methods.

(a) To establish a protected area, the distance from the edge of
a state-owned highway right-of-way shall be measured horizontally
along a line at the same elevation and at a right angle to the cen-
terline of the highway for a distance of 600 feet (210.17 meters)
inside urban area boundaries and to the horizon outside urban area
boundary lines.

(b) A V-shaped or back-to-back type billboard advertising
device shall not be more than fifteen (15) feet apart at the nearest
point between the two (2) sign facings and shall be connected by
bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be
greater than forty-five (45) degrees.

(c) The spacing between advertising devices shall be meas-
ured as described in KRS 177.863(2)(c).

(8) Criteria for off-premise advertising devices. The following
criteria are applicable to [any] off-premise advertising devices
located in a protected area:
(a) An off-premise advertising device shall not exceed the max-
imum size stated in KRS 177.863(3)(a); (b) A V-shaped, double-faced, or back-to-back billboard adver-
sising device shall be considered as specified in KRS
177.863(2)(b);
(c) A nonelectric billboard advertising device may contain a
maximum of two (2) messages per direction or facing and the device
does not exceed the maximum size stated in KRS 177.863(3)(a).

2. If a nonelectric billboard advertising device contains two
(2) messages in one (1) direction of travel on a single-faced or panel), each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a non-electric billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where one (1) message (panel or facing) is placed above or beside the other but where the two (2) separate panels or facings are not touching:
   a. There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and
   b. The combined size of the two (2) message areas, faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

4. An electronic sign shall be allowed only one (1) area for message display and shall not be used in conjunction with a non-electric sign.

4. An on-premise advertising device shall not affect spacing requirements for billboard advertising.

5. If it is physically possible, a billboard advertising device shall be illuminated by white lights.

(f) Any conforming off-premise advertising device located within a commercially or industrially developed area located on the interstate system or a primary road may contain an electronic sign under the following criteria:

1. Each message or copy displayed on an off-premise electronic sign shall remain in a fixed or static position for at least eight (8) seconds and the time to change from one (1) message to another shall be no greater than two (2) seconds;

2. An off-premise electronic sign shall contain a default design that will freeze the device in one (1) position if a malfunction occurs;

3. Off-premise electronic signs shall not include or utilize an image or copy which moves continuously or has any moving, scrolling, animated, or moving video displays or broadcasts.

4. A conforming off-premise advertising device may be modified, changed, or converted to an electronic sign, including any required components, if the advertising device is in compliance with the provisions of this administrative regulation and any other applicable local, state, and federal statutes, administrative regulations, rules, and ordinances including the requirements of KRS Chapter 177. The modifications may include the following:
   a. The addition of electric facilities and equipment lights, or other illumination and
   b. The enlargement or rebuilding of the advertising device or structure with materials other than the kind of materials with which the device was originally erected or required to support the new components if the structure meets the size criteria set forth in this administrative regulation.

5. No advertising device may be modified unless the permit holder has completed and submitted a modification application in accordance with the provisions of this administrative regulation.

9. Criteria for on-premise advertising devices. The following criteria shall be applicable to an on-premise advertising device located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary line.

(b) 1. There shall not be more than one (1) on-premise device located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) If further than fifty (50) feet from the activity boundary line, an on-premise advertising device shall not exceed:
   1. Twenty (20) feet (6.09 meters) in:
      a. Length; or
      b. Width; or
   2. 150 square feet (thirteen and eight-tenths (13.8) square meters) in area:
      a. Including border and trim; and
      b. Excluding supports.

(d) An on-premise advertising device shall not be located more than four hundred feet (121.9 meters), measured within the property boundary, from the advertised activity boundary line.

2. If using a corridor to reach the location of the device, the corridor shall not be less than 100 feet (thirty and five-tenths (30.5) meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. If taking measurements for the placement of an on-premise industrial park sign as described in paragraph (i) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

6. If taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.

7. There shall not be requirements for spacing between on-premise advertising devices.

(i) An advertising device other than one (1) listed here shall not be located as to be visible from the main traveled way of an Interstate, parkway, NHS, or FAP highway:

1. One (1) indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. One (1) advertising the sale or leasing of the property upon which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. One (1) advertising the sale or leasing of the property upon which the advertising device is located;

5. One (1) setting forth the advertisement of an activity conducted on or the sale of a product or service on the property where the advertising device is located;

6. A sign with a maximum area of eight (8) square feet (0.743 square meters) noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall not advertise an activity, service, or business other than that conducted upon the property on which it is located.

(h) An on-premise electronic sign which contains, includes, or is illuminated by a flashing, intermittent, or moving lights shall not be used except to advertise an activity, service, business, or product available on the property on which the sign is located or to present a public service message.

1. The advertising message may contain words, phrases, sentences, symbols, trademarks, or logos.

2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.

3. A message consisting of one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.

4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.

5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.

6. A display shall scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.

7. A display shall not include an art animation or graphic that portrays motion, except for movement of a graphic onto or off of
the sign board.

(i) A brand or trade name shall not be advertised on an on-premise advertising device if the sale of a product or service with the brand or trade name is incidental to the primary activity, service, or business.

(ii) An industrial park type on-premise advertising device which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain the:

1. Name of the industrial park;
2. City or county associated with the industrial park; or
3. Name of the individual business or industry located in the industrial park.

(iii) A single on-premise sign erected for a shopping center, mall, or other combined businesses location may:

1. Identify each of the individual businesses conducted at the location; or
2. Include a single display area used to advertise on-premise activities.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. An advertising device closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) 1. A billboard advertising device may be erected or maintained in a protected area of an interstate or parkway highway if:
   a. The area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation and if:
      (i) The area is a commercial or industrial enterprise as defined in Section 1 of this administrative regulation and if:
      (i) Maintains all necessary business licenses as required by applicable state, county, or local laws or ordinances;
      (ii) Has electricity, land line telephone, plumbing, indoor restroom, permanent flooring, and adequate heating;
      (iii) Has a building located within 600 feet (210.17 meters) from the nearest edge of the right-of-way of the controlled route that is designated with a permanent foundation, build, or modified for its current commercial or industrial use;
      (iv) Is in active operation a minimum of six (6) months prior to the date of submitting an application for an advertising device permit;
   b. The advertising device complies with the following provisions:
      (i) KRS 177.830 through 177.890;
      (ii) This administrative regulation; and
      (iii) Applicable county or city zoning ordinances.
   2. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements shall also apply:
      a. The recreational vehicle or mobile home shall be permanently secured on piers, pad, or foundation;
      b. All wheels, axles, and springs shall be removed;
      c. A self-propelled vehicle shall not qualify for use as a business or office;
   3. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

(ii) If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(iii) A nonelectric billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in a manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

(iv) An electric sign designated to be primarily viewed from an interstate or parkway highway shall not be erected within 1,000 feet (304.8 meters) of any other off-premise advertising device on the same side of the interstate, or parkway highway unless separated by a building, natural obstruction, or roadway in a manner that only one (1) off-premise advertising device located within the 1,000 feet (304.8 meters) is visible from the interstate or parkway highway at any one time.

(v) The erection or existence of an advertising device shall not be permitted in a protected area of an interstate or parkway highway if:

(a) Advertises an activity that is illegal, pursuant to state or federal law;
(b) Is obsolete;
(c) Is not:
   1. Clean;
   2. Safe; and
   3. In good repair;
(d) Is not securely affixed to a substantial structure permanently attached to the ground;
(e) Attempts to:
   1. Direct the movement of traffic; or
   2. Interfere with, lessen, or resemble an official traffic sign, signal, or traffic control device;
(f) Prevents the driver of a vehicle from having a clear and unobstructed view of:
   1. An official sign; or
   2. Approaching or merging traffic;
   (g) Includes or is illuminated by flashing, intermittent, or moving lights, except for an on-premise device that meets the requirements of Section 3(9)(n) of this administrative regulation;
   (h) Uses lighting, unless it is:
      1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or
      2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;
   (i) Moves or has animated or moving parts;
   (j) Has at least one (1) employee attendant at the activity site performing work and available to the public for at least twenty (20) hours per week for at least six (6) months per year;
   (k) The advertising device complies with the following provisions:
      (i) KRS 177.830 through 177.890;
      (ii) This administrative regulation; and
      (iii) Applicable county or city zoning ordinances.
   2. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements shall also apply:
      a. The recreational vehicle or mobile home shall be permanently secured on piers, pad, or foundation; and
      b. All wheels, axles, and springs shall be removed;
      c. A self-propelled vehicle shall not qualify for use as a business or office;
   3. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

(vi) If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(vii) A nonelectric billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in a manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

(viii) An electric sign designated to be primarily viewed from an interstate or parkway highway shall not be erected within 1,000 feet (304.8 meters) of any other off-premise advertising device on the same side of the interstate, or parkway highway unless separated by a building, natural obstruction, or roadway in a manner that only one (1) off-premise advertising device located within the 1,000 feet (304.8 meters) is visible from the interstate or parkway highway at any one time.

The erection or existence of an advertising device shall not be permitted in a protected area of an interstate or parkway highway if:

(a) Advertises an activity that is illegal, pursuant to state or federal law;
(b) Is obsolete;
(c) Is not:
   1. Clean;
   2. Safe; and
   3. In good repair;
(d) Is not securely affixed to a substantial structure permanently attached to the ground;
(e) Attempts to:
   1. Direct the movement of traffic; or
   2. Interfere with, lessen, or resemble an official traffic sign, signal, or traffic control device;
(f) Prevents the driver of a vehicle from having a clear and unobstructed view of:
   1. An official sign; or
   2. Approaching or merging traffic;
   (g) Includes or is illuminated by flashing, intermittent, or moving lights, except for an on-premise device that meets the requirements of Section 3(9)(n) of this administrative regulation;
   (h) Uses lighting, unless it is:
      1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or
      2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;
   (i) Moves or has animated or moving parts;
   (j) Has at least one (1) employee attendant at the activity site performing work and available to the public for at least twenty (20) hours per week for at least six (6) months per year;
   (k) The advertising device complies with the following provisions:
      (i) KRS 177.830 through 177.890;
      (ii) This administrative regulation; and
      (iii) Applicable county or city zoning ordinances.
   2. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements shall also apply:
      a. The recreational vehicle or mobile home shall be permanently secured on piers, pad, or foundation; and
      b. All wheels, axles, and springs shall be removed;
      c. A self-propelled vehicle shall not qualify for use as a business or office;
   3. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

4.3 If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

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(g) An enterprise or structure on either side of the controlled Interstate or parkway highway within the confines of the lines perpendicular to the centerline of the highway may be counted as part of the ten (10) needed.

(h) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area".

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising devices on NHS and FAP highways. A billboard advertising device may be permitted in a protected area of a NHS or FAP highway if it is visible from an unzoned commercial or industrial area or a commercial or industrial zone and if the device complies with applicable state, county, or city zoning ordinances or administrative regulations.

(a)1. There may be [shall be legal to have] a permitted billboard advertising device in an unzoned commercial and industrial area of an NHS or FAP highway if there is a commercial, business, or industrial activity which is based on the main traveled way of an NHS or FAP highway and is visible from at least one (1) device located within the required spacing.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is not visible from the main traveled way of an NHS or FAP highway and is protected shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet (91.4 meters) from the right-of-way of the NHS or FAP highway.

(d) Minimum spacing between nonlenticular billboard advertising devices in an unzoned commercial or industrial area shall be 300 feet (91.4 meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. Minimum spacing between electronic signs in an unzoned commercial or industrial area shall be 300 feet (91.4 meters), unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

3. The minimum spacing requirement for nonlenticular billboard advertising devices shall be reduced to 100 feet (30.4 meters) within an incorporated municipality which does not have comprehensive zoning.

4. The minimum spacing requirement for electronic signs shall be 300 feet (91.4 meters), which does not have comprehensive zoning.

(e)1. Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (30.4 meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

2. Minimum spacing between electronic signs in any comprehensively zoned commercial or industrial area shall be 300 feet (91.4 meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation shall be required for an on-premise advertising device on NHS and FAP routes.

(2) Application for an advertising device permit.

(a) Application for an advertising device permit shall be made on Transportation Cabinet form TC 89-31. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device.

(b) The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(c) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;

2. Applicant's plot plan;
3. Location, milestone and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the executed lease or ownership of the proposed billboard site, if applicable; and
6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photographs, drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is against the advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or
(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.
(a)1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.
(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.
(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(3) The advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or the owner of the property which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Request for reconsideration. If the permittee or owner disagrees with a notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:
(a) Contact the person who sent the notice to:
1. Request reconsideration;
2. Attempt to correct a problem with his advertising device; or
3. Provide additional information to the Department of Highways.
(b) File an appeal in accordance with Section 9 of this administrative regulation.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Payment of just compensation shall be determined by:

(a) An appraisal; or
(b) A value finding.
(2) A nonconforming advertising device shall not qualify for just compensation if it:

(a) Is:
1. Destroyed;
2. Abandoned;
or
3. Discontinued;
(b) Receives more than routine maintenance; or
(c) Does not comply with the provisions of:
1. Section 4(3) of this administrative regulation; or
2. KRS 177.863.

Section 9. Appeal Procedure. (1)(a) A party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of Legal Services [General Counsel] in the Transportation Cabinet, 200 Metro Street [604 High Street], Frankfort, Kentucky 40622.
(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.
(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway or other state maintained highway designated by the Transportation Cabinet as a scenic byway, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.
(2) The outdoor advertising devices legally in existence when the date of designation of the highway as scenic may continue to have routine maintenance.
(3) The sponsor of a scenic byway application for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.
(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways:

<table>
<thead>
<tr>
<th>Milepoints</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Cordell Hull Highway in Barren County:</td>
<td></td>
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<tr>
<td>KY 70 - From I-65 overpass to Kentucky 90</td>
<td>5.118</td>
<td>5.359</td>
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<td>KY 90 - From Kentucky 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass)</td>
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<td>9.222</td>
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<td>US 31E - From Kentucky 90 to US 68</td>
<td>14.849</td>
<td>14.258</td>
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<tr>
<td>US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow</td>
<td>1.386</td>
<td>1.516</td>
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<td>US 68 - From US 31E to US 31EX</td>
<td>11.741</td>
<td>12.577</td>
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<td>(c) Old Kentucky Turnpike in Lame County:</td>
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<tr>
<td>US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line</td>
<td>7.300</td>
<td>20.725</td>
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<td>(c) Old Kentucky Turnpike in Nelson County:</td>
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<td>US 31E - From the Lame County Line to US 62 in Bardstown</td>
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<td>14.205</td>
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<td>US 150 - From US 62 to entrance of Old Kentucky Home State Park</td>
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<td>0.240</td>
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<td>(d) Shakerstown Road in Mercer County:</td>
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<tr>
<td>US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village</td>
<td>15.652</td>
<td>13.252</td>
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<td>(e) Duncan Hines Scenic Highway in Warren County:</td>
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<tr>
<td>KY 101 - From US 31W (south) to Edmonson County Line</td>
<td>11.641</td>
<td>12.850</td>
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<tr>
<td>US 31W - From Duncan Hines former home to Kentucky 445 overpass</td>
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<td>(f) Duncan Hines Scenic Highway in Edmonson County:</td>
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<td>Milepoint</td>
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<tr>
<td>KY 101 - From Warren County Line to Kentucky 259 at Rhoda</td>
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<td>KY 259 - From Kentucky 101 at Rhoda to Kentucky 70 (east)</td>
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<td>12.096</td>
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<td>KY 70 - From Kentucky 259 (south) to Kentucky 259 (north)</td>
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<td>KY 259 - From Kentucky 238 at Bee Spring to Kentucky 738</td>
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<td>(g) Great River Road in Fulton County</td>
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<td>KY 239 - From Hickman County Line to Kentucky 94 in Cavey</td>
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<td>KY 94 - From the Tennessee State Line to Kentucky 1099 west of Hickman</td>
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<td>(h) Great River Road in Hickman County</td>
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<td>KY 239 - From Fulton County Line to Kentucky 123</td>
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<td>KY 123 - From Kentucky 239 to Proposed FAP 94 at Hallwell</td>
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<td>KY 123 - From Bottery Road in South Columbus to Kentucky 58</td>
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<td>(i) Pine Mountain Road in Letcher County</td>
<td>17.308</td>
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<td>US 119 - From Kentucky 15 in Whitesburg to Kentucky 806 near Oven Fork</td>
<td>0.000</td>
<td>10.601</td>
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<td>(l) US 68 Segment 1 in Boyle County</td>
<td>7.369</td>
<td>7.475</td>
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<td>US 68 - From US 150 in Perryville to US 150 in Perryville</td>
<td>10.565</td>
<td>15.767</td>
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<td>(k) US 68 Segment 1 in Mercer County</td>
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<td>20.104</td>
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<td>US 68 - From US 127 at Mooreland Avenue to Jessamine County Line</td>
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<td>9.155</td>
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<td>(l) US 68 Segment 1 in Jessamine County</td>
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<td>US 68 - From Mercer County Line to 0.5 miles south of Kentucky 1980</td>
<td>2.583</td>
<td>2.772</td>
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<td>(m) US 68 Segment 2 in Fayette County</td>
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<td>10.814</td>
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<td>US 68 - From Swart Avenue to Bourbon County Line</td>
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<td>US 27/68 - From Fayette County Line to US 68X in Paris</td>
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<td>US 68X - From 10th Street to 8th Street in Paris</td>
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<tr>
<td>US 68X - From Paris Bypass to North Middletown Road in Paris</td>
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<td>(o) US 68 Segment 2 in Nicholas County</td>
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<td>US 68 - From Bourbon County Line to Kentucky 182/316</td>
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<td>(p) US 68 Segment 3 in Nicholas County</td>
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<td>US 68 - From the Licking River Bridge to the Robertson County Line</td>
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<td>1.357</td>
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<tr>
<td>US 68 - From Nicholas County Line to the Fleming County Line</td>
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<td>3.717</td>
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<td>(q) US 68 Segment 3 in Bourbon County</td>
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<td>US 68 - From Robertson County Line to the Mason County Line</td>
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<td>US 68 - From Fleming County Line to US 62 in Washington</td>
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<td>US 62 - From Kentucky 2515 to Ohio State Line</td>
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<td>(f) Kentucky 89 (US 421) in Jackson County</td>
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Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.
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<tr>
<td><strong>US 68X</strong> - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.</td>
</tr>
<tr>
<td><strong>US 690</strong> - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line</td>
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<tr>
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<tr>
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<tr>
<td><strong>US 23</strong> - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line</td>
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<tr>
<td><strong>KY 180</strong> - From south limits of I-64 Interchange to US 60</td>
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<tr>
<td><strong>US 60</strong> - From Kentucky 180 near Cannelton via 13th Street to Winchester Avenue in Ashland</td>
</tr>
<tr>
<td><strong>US 235</strong> - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line</td>
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<td><strong>KY 52</strong> - From US 150 to Garrard County Line</td>
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<td><strong>US 127</strong> - From Lincoln County Line to US 150 (3rd and Main Street Intersection)</td>
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<tr>
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<tr>
<td><strong>US 127B</strong> - From US 127 via the Danville Bypass to US 127 near Kentucky 2168</td>
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<td><strong>US 150</strong> - From Washington County Line to US 68 in Perryville</td>
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<td><strong>US 68</strong> - From US 150 in Perryville to US 150 in Perryville.</td>
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<td><strong>(12) Breckinridge County</strong></td>
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<td><strong>KY 259</strong> - From Grayson County Line to Kentucky 79.</td>
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<td><strong>KY 79</strong> - From Kentucky 259 to US 60.</td>
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<tr>
<td><strong>US 60</strong> - From US 60X (Business) via the Cloveport and Hardinsburg Bypass to the Meade County Line</td>
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<td><strong>KY 121</strong> - From US 641 to Graves County Line</td>
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<tr>
<td><strong>KY 641</strong> - From Tennessee State Line via Murray to Marshall County Line</td>
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<tr>
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<td>Proposed FAP 94 - From Kentucky 123 at Hillsville along Cole and Chalk Bluff Roads to Kentucky 123 at South Columbus.</td>
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<tr>
<td><strong>KY 876 - From west limits of I-75 interchange in Richmond to Kentucky 52 (Irvin Road),</strong></td>
</tr>
<tr>
<td><strong>US 25 - From US 421 via Big Hill Avenue to Kentucky 876,</strong></td>
</tr>
<tr>
<td><strong>US 421 - From US 25 to Rockcastle County Line,</strong></td>
</tr>
<tr>
<td><strong>US 421S - From Kentucky 52 (Irvin Road) to north urban limits of Richmond at US 25,</strong></td>
</tr>
<tr>
<td><strong>US 25 - From proposed Richmond Bypass to northwest limits of I-75 Interchange at Richmond,</strong></td>
</tr>
<tr>
<td><strong>KY 627 - From US 25 west of I-75 to Clark County Line,</strong></td>
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<tr>
<td><strong>(70) Magoffin County:</strong></td>
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<tr>
<td><strong>KY 114 - From US 460 to Floy County Line,</strong></td>
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<td><strong>US 460 - From Morgan County Line to Johnson County Line,</strong></td>
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<tr>
<td><strong>(71) Marshall County:</strong></td>
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<tr>
<td><strong>US 68 - From Taylor County Line to Kentucky 55 (Walnut St.),</strong></td>
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<tr>
<td><strong>KY 55 - From US 68 (Main Street) via Walnut Street to Kentucky 49 (St. Mary's Road),</strong></td>
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<tr>
<td><strong>KY 49 - From Kentucky 55 (St. Mary's Road) via Walnut Street to Kentucky 49 (Proctor Knott Avenue),</strong></td>
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<tr>
<td><strong>KY 55 - From Kentucky 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line,</strong></td>
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<tr>
<td><strong>(72) Marshall County:</strong></td>
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<td><strong>KY 58 - From Graves County Line to Kentucky 80,</strong></td>
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<td><strong>KY 80 - From Kentucky 68 to US 68,</strong></td>
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<tr>
<td><strong>US 68 - From McCracken County Line to Trigg County Line,</strong></td>
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<tr>
<td><strong>US 641 - From Calloway County Line to US 62,</strong></td>
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<tr>
<td><strong>US 62 - From I-24 to Livingston County Line,</strong></td>
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<tr>
<td><strong>US 641S - From US 641 to Purchase Parkway,</strong></td>
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<tr>
<td><strong>KY 346 - From Purchase Parkway to US 641,</strong></td>
</tr>
<tr>
<td><strong>(73) Martin County:</strong></td>
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<tr>
<td><strong>KY 845 - From Kentucky 40 at a point west of Inez Bypass to Kentucky 3 northbound south of Inez,</strong></td>
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<tr>
<td><strong>KY 9 - From Kentucky 845 westbound via Inez Bypass to Kentucky 645 eastbound,</strong></td>
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<tr>
<td><strong>KY 645 - From Kentucky 3 southbound via Inez Bypass to Kentucky 40 southeast of Inez,</strong></td>
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<tr>
<td><strong>KY 40 - From Kentucky 645 southeast of Inez to West Virginia State Line,</strong></td>
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<tr>
<td><strong>KY 645 - From Lawrence County Line to Kentucky 40 at a point west of Inez,</strong></td>
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<td><strong>(74) Mason County:</strong></td>
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<td><strong>KY 11 - From Fleming County Line to Kentucky 9,</strong></td>
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<tr>
<td><strong>US 68 - From Fleming County Line to US 62 in Washington,</strong></td>
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<tr>
<td><strong>US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line,</strong></td>
</tr>
<tr>
<td><strong>KY 9 - From Lewis County Line to Bracken County Line,</strong></td>
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<tr>
<td><strong>KY 546S - From Kentucky 9 to Ohio State Line via proposed New Bridge,</strong></td>
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<td><strong>(75) Meade County:</strong></td>
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<tr>
<td><strong>US 60 - From Breckinridge County Line to US 31W,</strong></td>
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<tr>
<td><strong>US 60 - From US 60 to Kentucky 448 near Buck Grove,</strong></td>
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<tr>
<td><strong>KY 144 - From US 60 to Kentucky 1051 (Ewing Bypass),</strong></td>
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<tr>
<td><strong>KY 1051 - From Kentucky 448 via Brandenburg Bypass to Kentucky 79,</strong></td>
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<tr>
<td><strong>KY 79 - From Kentucky 1051 via Brandenburg Bypass to Indiana State Line,</strong></td>
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<tr>
<td><strong>(76) Menifee County:</strong></td>
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<tr>
<td><strong>US 460 - From Montgomery County Line to Morgan County Line,</strong></td>
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<td><strong>(77) Mercer County:</strong></td>
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<tr>
<td><strong>US 127 - From Boyle County Line via Danville Road to US 68,</strong></td>
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<td><strong>US 68 - From US 127 at Mooreland Avenue to Jessamine County Line,</strong></td>
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<td><strong>US 127 - From US 68 to Anderson County Line,</strong></td>
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<td><strong>(78) Metcalfe County:</strong></td>
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<td><strong>KY 90 - From Barren County Line to Cumberland County Line,</strong></td>
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<td><strong>(79) Montgomery County:</strong></td>
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<tr>
<td><strong>US 46C - From Bourbon County Line to Kentucky 686 (Mount Sterling Bypass),</strong></td>
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<tr>
<td><strong>KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to KY 460 (Frenchburg Road) at south urban limits of Mount Sterling,</strong></td>
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<tr>
<td><strong>US 460 - From south urban limits of Mount Sterling to Menifee County Line,</strong></td>
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<td><strong>(80) Morgan County:</strong></td>
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<td><strong>KY 7 - From US 460 in West Liberty to Elliott County Line,</strong></td>
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<td><strong>KY 203 - From Wolfe County Line to US 460,</strong></td>
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<tr>
<td><strong>US 46C - From Menifee County Line via West Liberty to Magoffin County Line,</strong></td>
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<td><strong>(81) Monkes County:</strong></td>
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<tr>
<td>US 431</td>
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<td>(82) Nelson County:</td>
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<td>(83) Nicholas County:</td>
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<td>(85) Owen County:</td>
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<td>KY 11</td>
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<td>(86) Pendleton County:</td>
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<td>US 27</td>
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<td>KY 9</td>
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<td>(87) Pike County:</td>
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<td>US 460</td>
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<td>(89) Powell County:</td>
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<td>KY 11</td>
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<td>(90) Pulaski County:</td>
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<td>US 27</td>
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<td>KY 80B</td>
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<td>KY 90</td>
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<td>KY 461</td>
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<td>(91) Robertson County:</td>
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<td>US 98</td>
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<td>(92) Rockcastle County:</td>
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<td>(93) Rowan County:</td>
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<td>(94) Russell County:</td>
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<td>US 127</td>
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<td>(95) Scott County:</td>
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<td>US 460</td>
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<td>Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.</td>
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<td>US 460B</td>
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<td>US 460</td>
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<td>(96) Shelby County:</td>
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<td>KY 55</td>
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<td>US 60</td>
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<td>(97) Simpson County:</td>
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<td>(98) Spencer County:</td>
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<td>(100) Todd County:</td>
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<td>(101) Trigg County:</td>
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<td>US 68</td>
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<td>US 6EX</td>
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<td>KY 3/68</td>
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<td>(102) Trigg County:</td>
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<td>US 421</td>
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<td>US 42</td>
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<td>(103) Union County:</td>
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<td>KY 56</td>
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<td>KY 56</td>
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<tr>
<td>US 59</td>
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</tbody>
</table>
US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield. .000 2,900
US 60 - From proposed Bypass east of Morganfield to Henderson County Line. 18.100 26,069
KY 109 - From Webster County Line to US 60. .000 1,536

(104) Warren County:
KY 101 - From I-65 to US 31W. 7.861 11,641
US 31W - From Kentucky 101 south to Kentucky 101 north. 27.859 28,557
KY 101 - From US 31W to Edmonson County Line. 11.641 12,850
US 68 - From Logan County Line to US 31W. .000 13,060
US 31W - From US 68 to Kentucky 445 Overpass. 14.670 17,569
KY 445 - From US 31W to I-65. .000 1,090
KY 880 - From Kentucky 185 to US 68. .000 5,128
KY 185 - From Kentucky 880 to US 68. .000 292
US 231 - From Allen County Line to US 68. .000 9,106
KY 3172 - From Logan County Line via Old US 68 to Kentucky 240. .000 0.300

(105) Washington County:
KY 55 - From Manon County Line to US 150. .000 4,551
KY 355 - From US 150 to north end of Bluegrass Parkway Interchange. .000 14,736
US 150 - From Nelson County Line to Boyle County Line. .000 21,359

(106) Wayne County:
KY 90 - From Clinton County Line to Pulaski County Line. .000 25,235

(107) Webster County:
US 41A - From Hopkins County Line to Kentucky 670. .000 1,324
KY 670 - From US 41A to Kentucky 109. .000 2,712
KY 109 - From Kentucky 670 to Union County Line. 2.876 14,664

(108) Whitley County:
KY 90 - From McCreary County Line to US 25W. .000 8,328
US 25W - From Kentucky 90 to east limits of I-75 ramps. 22.183 29,677
KY 90 - From US 25W along proposed alignment to Knox County Line. .000 2,600

(109) Wolfe County:
KY 15 - From Breathitt County Line to Kentucky 191. .000 9,515
KY 155 - From Kentucky 15 to westbound land of Mountain Parkway. .000 1,054
KY 11 - From Lee County Line to Powell County Line. .000 5,317
KY 191 - From Kentucky 15 Spur to Kentucky 203. .000 10,342
KY 203 - From Kentucky 191 to Morgan County Line. .000 1,323

(110) Woodford County:
US 60 - From Franklin County Line to Fayette County Line. .000 13,039

Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference:
(a) "The FHWA/Kentucky Agreement for the Control of Outdoor Advertising" between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1971; and
(b) "Application for an Advertising Device Permit," Form TC 99-31, October 1997 edition;
(c) "Measurement of Commercially or Industrially Developed Area," a Transportation Cabinet document effective February 2005 (March 4-97).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, Transportation Cabinet Office Building, 200 Mero Street [11th Floor, State Office Building, 601 High Street] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [Phone number is (502) 564-4106. The business hours are 8 a.m. to 4:30 p.m. Monday through Friday.]

JOSEPH W. PRATHER, Secretary
APPROVED BY AGENCY: July 15, 2008
FILED WITH LRC: July 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2008 at 10 a.m., local time at the Transportation Cabinet, Transportation Cabinet Office Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your need five workdays prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of this 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 file a written comment on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Dana Fugazzi, 51-300 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-4610.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth standards for advertising devices on or visible from interstate, parkways, and federal-aid primary highways.
(b) The necessity of this administrative regulation: KRS 177.860 requires the Transportation Cabinet to promulgate administrative regulations establishing reasonable standards for advertising devices to protect the safety of and to guide the users of highways. In addition, compliance with the "Highway Beautification Act," 23 U.S.C. Section 131 is required to receive federal highway funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 177.860, this administrative regulation sets forth the standards for advertising devices; establishes the requirements for obtaining a required permit for advertising devices; and establishes just compensation for the removal of legally erected advertising devices that are no longer in compliance with state law or administrative regulation as required by KRS 177.867.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides standards for advertising devices on or visible from interstate, parkways, and federal-aid primary highways.

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

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How the amendment will change the existing administrative regulation: This amendment updates the regulation by allowing the use of electronic signs.

(b) The necessity of the amendment to this administrative regulation: It is necessary to update the regulation to remain current with federal mandates.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 177.860, this amendment sets forth the standards for electronic advertising devices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides standards for the use of electronic advertising devices on or visible from interstate, parkway, and federal-aid primary highways.

(e) The expected number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all owners of outdoor advertising devices 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: Those entities that wish to place an advertising device in a protected area which is visible from the main traveled way of any interstate or parkway highway must follow the standards as established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the entities are the administrative costs associated with the permitting process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation informs the entities of the standards used by the Cabinet for the permitting of advertising devices on interstate, parkway, and federal-aid primary highways.

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

(a) Initially: No known cost.

(b) On a continuing basis: There are ongoing costs related to administration of the program within the cabinet and enforcement of the regulation. These amendments do not increase the current cost for these programs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation if it is an amendment: The cabinet does not anticipate a need for increased funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? Is applied since there are less stringent standards for the placement of billboards adjacent to FAP highways when compared to the interstate and parkway highways. In addition, there are less stringent standards for on-premise signs when compared to off-premise signs.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards: Outdoor advertising devices are controlled on the interstate highways, parkways, national highway system, and federal-aid primary highways. Interstate and parkway highways are treated the same as with more control imposed on those new billboards. No new billboards are allowed to be constructed on highways which are FAP, interstate, or parkways which are also designated as scenic.

3. Minimum or uniform standards contained in the federal mandate: Outdoor advertising devices are mandated to be controlled on the interstate highways, parkways, national highway system, and federal-aid primary highways. The parkways are required to be treated as interstate highways for billboard control. Scenic highways which are FAP, interstate, or parkways shall not have new billboards erected along them.

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

5. Implication of the stricter standard, or additional or different responsibilities or requirements. There is more than one federal mandate in operation. The basic mandate is the federal Highway Beautification Act governed by 23 C.F.R Part 750. However, the Kentucky is one of the states that voluntarily agreed in 1961 to stricter controls on outdoor advertising devices within 600 feet of interstate and parkway highways. Kentucky received over $2.5 million in bonus payments since entering into the Bonus Agreement with FHWA. Violation of the agreement would cause those funds and others spent in removing billboards to be repaid to the federal government. In addition, Kentucky has not allowed the less stringent controls in Cotton Areas. This would require an act of the General Assembly as well as requiring the Commonwealth to pay back federal money received under the bonus agreement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: None.

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:

EDUCATION CABINET
Department for Libraries and Archives
Public Records Division
(Amendment)

725 KAR 1:300. Scheduling public records for retention and disposal; procedures.

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

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authorized 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", July 2008 [September 2007]; and
   (b) "Destruction of Public Records: A Procedural Guide", July 2008 [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.

WAYNE ONKST, State Librarian and Commissioner
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 11, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008, at 9 a.m., at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Barbara Teague, Public Records Branch Manager, P. O. Box 537, Frankfort, Kentucky 40602, phone (502) 564-8300, ext. 252, fax (502) 564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barbara Teague
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records, and furnishes guidance to public agencies related to their responsibilities in these areas.
(b) The necessity of this administrative regulation: KRS 171.450 provides that the department shall enforce the provisions of KRS 171.410-171.740 by appropriate rules and regulations. KRS 171.450(1)(a) and (b) requires the department to establish procedures for the completion and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. KRS 171.560 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 value to warrant their continued preservation. This regulation ensures that state agencies have the guidance they need to meet the requirements of these statutes.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the completion and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation sets out those procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently facilitates the disposal or destruction of public records by providing guidance to public agencies in meeting their responsibilities to dispose of records based on decisions made by the State Archives and Records Commission and documented on approved records retention schedules.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment provides updated guidelines for public agencies on the scheduling of records for retention and disposal.
(b) The necessity of the amendment to this administrative regulation: The guidelines incorporated by reference into this regulation have been reviewed and updated. Incorporating the revised guidelines will provide state and local agency personnel with up-to-date instructions for records retention scheduling and records disposal.
(c) How the amendment conforms to the content of the authorizing statute: The department is required by KRS 171.410 to 171.740 to enforce the provisions of KRS 171.450 and 171.580 by appropriate rules and regulations, and this amendment ensures that the terms of this administrative regulation respond to the need for appropriate retention and disposal of public agency records, and that state and local government agencies are able to meet additional challenges related to disposing of records maintained in electronic formats.
(d) How the amendment will assist in the effective administration of the statute: The amendment will address retention and disposal of public agency records, regardless of format, and ensure that the regulation provides guidance and direction to state and local government agencies so that they can meet the requirements of KRS 171.450 and 171.580, regardless of the formats of their records.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public agencies are affected by this regulation, as all have a responsibility to dispose of records according to decisions of the State Archives and Records Commission.
(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: There will be no new responsibilities added under this amendment to those already existing for public agencies.
(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 new costs added under this amendment to those already existing for public agencies.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies that comply with this regulation will improve efficiency and productivity, control the creation and growth of records, support better decision making, recognize cost savings from reduced records storage costs, manage risk more effectively, protect business continuity, and preserve corporate memory.
(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 for agencies to implement this amendment. This amendment merely provides greater procedural guidance to agencies for activities which they are undertaking already.
(b) On a continuing basis: Same as (5)(a) above.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in the amendment are already undertaken by pub-
lic agencies; the regulation is only being amended to provide more
detailed guidance and to respond to the changing environment in
which recordkeeping and records disposal occurs. Over the years,
the department has regularly advised agencies of their responsibil-
ities in this area. It will continue to rely on this approach to secure
compliance with the terms of the regulation and to persuade agen-
cies that it is in their continuing self interest to help ensure timely
disposal of obsolete records and the preservation and continued
accessibility of their essential documentation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this
regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? All state and local
government agencies are required to undertake the activities affected
by this amendment.

3. Identify each state or federal statute or federal regulation that
requires or authorizes the action taken by the administrative regula-
tion. KRS 171.680 requires that the state and local agency heads
establish and maintain active, continuing programs for the economi-
cal and efficient management of the records of their agencies, includ-
ing "promotion of the maintenance and security of records deemed
appropriate for preservation, and facilitation of the segregation and
disposal of records of temporary value."

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 net effect on agencies' expenditures and revenues.

(a) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties, fire
departments, or school districts) for the first year? There will be no
additional revenues generated because of this amendment.

(b) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties, fire
departments, or school districts) for subsequent years? There will be
no additional revenues generated because of this amendment.

(c) How much will it cost to administer this program for the first
year? There will be no additional costs generated because of this
amendment.

(d) How much will it cost to administer this program for subse-
quently years? There will be no additional costs generated because of
this amendment.

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

Revenues (+/-): $0.00
Expenditures (+/-): $0.00
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Employment and Training
(Amendment)

787 KAR 1:190. Recoupment and recovery.

RELATES TO: KRS 341.415
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.415(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
341.115(1) authorizes the secretary to promulgate administrative
regulations necessary or suitable for the proper administration of
KRS Chapter 341. KRS 341.415(1) limits recoupment and recovery
in the discretion of the secretary and in cases of benefits overpaid
as a result of "office error". This administrative regulation estab-
lishes the actions and instances which shall constitute "office error"
and which shall otherwise limit (for the purpose of) recovery and
recoupment.

Section 1. The following shall constitute "office error" in the payment of benefits:
(1) Errors in computing the benefit rate;
(2) Inconsistent weekly payment due to a failure to consider de-
ducible amount that was properly reported by a claimant;
(3) Payment beyond the expiration of the benefit year;
(4) Payment in excess of the maximum benefit amount;
(5) Payment under an incorrect program;
(6) Retroactive notice of nonmonetary determinations, except a
determination that the claimant has committed fraud shall not be
considered office error;
(7) Monetary redeterminations;
(8) Payment during a period of disqualification;
(9) Payment to a wrong claimant; or
(10) Excessive payments resulting from human error in the
data entry process.

Section 2. Overpayments that result from office error or that in
the discretion of the secretary shall be collected solely through
deduction from future benefits shall not be subject to the filing of a
lien or reporting to credit reporting agencies.

RUSSELL L. SALSMAN, Executive Director
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 11, 2008 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on the administrative regulation shall be held on
August 26, 2008 at 9 a.m. EDT 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 the agency in writing by
August 19, 2008 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 hear-
ing 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 September 2,
2008. Send written notification of Intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation 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: The purpose of
this administrative regulation is to delineate the actions and in-
stances which shall constitute "office error" for the purpose of re-
cover and recoupment.

(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary for consistent application of "office error"
throughout the UI program in Kentucky.

(c) How this administrative regulation conforms to the content of
the authorizing statutes: KRS 341.115 grants the secretary the power
and authority to adopt, amend, or rescind rules and adminis-
tative regulations deemed necessary or suitable for the proper
administration of KRS Chapter 341. KRS 341.415(1) limits re-
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coupment and recovery in cases of benefits overpaid as a result of "office error."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for consistent interpretation of "office error" in establishing overpayments.

(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 deletes monetary redeterminations from the category of office error, and also provides that overpayments that are subject to limited recovery in the discretion of the secretary shall be subject to lien liens, which are not filed against claimants with overpayments subject to collection solely through deduction from future benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify treatment of two policy issues. In the first case, monetary redeterminations are not often due to employer reporting errors, not agency error, and in those instances where agency error in involved this is already covered under (amended) paragraph 1(6). The existing regulatory language is causing the agency to misclassify this type of error in federal activity reporting, which in turn affects funding. In the second case, the amendment will provide for consistent practice in the filing of recoupment liens, which are not filed against claimants with overpayments subject to collection solely through deduction from future benefits.

(c) How the amendment conforms to the content of the authoized statutes: KRS 341.115 grants the secretary the power and authority to adopt, amend, or rescind rules and administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide for consistent and equitable application of the statutes with regard to overpayment establishment and recovery.

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: All covered employers (approximately 90,000) and claimants (200,000 plus per year) are potentially affected by this regulation, however an indeterminate but smaller number of employers and workers will actually be subject to office error in any 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) 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. This amendment affects only the internal administration of the UI program.

(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 will be no effect on employers as a result of the amendment. Some claimants will benefit by not being subject to the filing of a recoupment lien.

(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:

(a) 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? There is no tiering applied since the administrative regulation could potentially affect any covered employer or worker.

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 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 1518.020, 341.115 and 341.415.

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 AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Employment and Training

(Amendment)

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training [Department for Employment Services].

RELATES TO: KRS 195.020, EO 2008-530 [165.040]
STATUTORY AUTHORITY: KRS 1518.290 [1518.020, 341.115]

NECESSITY, FUNCTION, AND CONFORMITY: The Education and [Cabinet for] Workforce Development is authorized by KRS 1518.290 [1518.020] to develop and to adopt administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. Executive Order 2008-530, effective June 16, 2008, reorganized the Education Cabinet and changed the name of the cabinet to the new Education and Workforce Development Cabinet. The function of this administrative regulation is to designate certain records of the cabinet's Office of Employment and Training [Department for Employment Services] as confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The cabinet has determined the following employment and service records to be confidential and not subject to disclosure:

(1) Foreign Labor Certification forms relating to the H-2A agricultural and H-2B nonagricultural programs:
(a) ETA-750 Part A, Application for Alien Employment Certification;
(b) ETA-750 Part B;
(c) ETA-790, Agricultural and Food Processing Clearance Order;
(d) ETA-9127, Foreign Labor Certification Quarterly Activity Report;
(e) Wage Survey Interview Record;
(f) H-2A(1), Employer-Furnished Housing and Facilities with Housing, Safety and Health Check List;
(g) H-2A Field Audit;
(h) H-2A(2), Housing Inspection;
(i) Kentucky H-2A Alien Labor Certification Program, Customer Satisfaction Survey;
(j) Office of Employment and Training Prevailing Wage Information Request;
(k) Office of Employment and Training Transmittal of Application for Alien Employment Certification;
(l) Office of Employment and Training Recruitment Notification;
(m) Work opportunity tax credit;
(n) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;
(o) ETA-9081, Individual Characteristics Form Work Opportunity Tax Credit;
(p) ETA-9083, Employer Certification Work Opportunity Tax Credit;
(q) Trade Adjustment Assistance and Trade Re-Employment Act;
(r) TAA/TRA-855, Request for Determination of Entitlement to TAA/TRA;
(s) TAA/TRA-855A, Request for Employment Information;
(t) TAA/TRA-858, Request for Occupational/Remedial Training and Allowances While in Training;
(u) TAA/TRA-888B;
(v) TAA/TRA-9042A, Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA);
(w) TAA Certification of Training Waiver;
(x) H-2A-400A, Verification of Employment;
(y) H-2A-301, Verification of Employment for Monthly Wage Supplement;
(z) H-2A-400, Request for Alternative Trade Adjustment Assistance;
(aa) ATAA-401, ATAA Trade Certified Employer Information;
(ab) Kentucky HCTC-100, Request for Temporary KY-HCTC Bridge Gap Payment.

(4) Employment Opportunities System (ELOS):
(a) Customer Services: Information Screen;
(b) Customer Services: Employment Objectives Screen;
(c) Customer Services: Services Screen;
(d) Customer Services: Service History Screen;
(e) Customer Services: Enrollments Screen;
(f) Customer Services: Outcomes Screen;
(g) Customer Services: Comments Screen;
(h) Customer Services: Audit Screen;
(i) Customer Services: Follow-Up Screen;
(j) Customer Services: Follow-Up Screen;
(k) Customer Services: Youth I-SS Screen;
(l) Customer Services: General Information Screen;
(m) Customer Services: Additional Information Screen;
(n) Customer Services: Programs & Public Assistance Screen;
(o) Customer Services: Programs & Public Assistance Screen II;
(p) Customer Services: Objective Screen;
(q) Customer Services: Work History Screen;
(r) Customer Services: Education/Lic Screen;
(s) Customer Services: Skills Screen;
(t) Customer Services: Saved Searches Screen;
(u) Customer Services: Activities Screen;
(v) Customer Services: Comments Screen;
(w) Customer Services: Tests Screen;
(x) Customer Services: GATB Pencor Screen;
(y) Customer Services: GATB Information Screen;
(z) Comprehensive Assessment Employment Screen;
(aa) Comprehensive Assessment-Education Screen;
(ab) Comprehensive Assessment-Financial Screen;
(ac) Comprehensive Assessment-Family Screen;
(ad) Comprehensive Assessment-Health Screen;
(ae) Comprehensive Assessment-Treatment Screen;
(af) Comprehensive Assessment-Medical Screen;
(ag) Comprehensive Assessment-Housing Screen;
(ah) Comprehensive Assessment-Transportation Screen;
(ai) Comprehensive Assessment-Comments Screen;
(aj) Workforce Investment Act (WIA); WIA: 20, Eligibility and Verification.

Section 2. [The following documents and records pertaining to the job training part of the Workforce Development Partnership Act (WTPA) in Kentucky shall be confidential and shall not be disclosed by the Department for Employment Services.]

(1) JTPA-1, application form;
(2) JTPA-20, verification of eligibility form and related source documents;

Section 2. Department for Employment Services records other than JTPA. The Cabinet for Workforce Development, Department for Employment Services has determined the following records to be confidential and not subject to disclosure:

(1) ES-507, temporary application form for selected employers;
(2) ES-508, reporting form;
(3) ES-511, application card;
(4) ES-514, job referrals;
(5) ES-515, test record card;
(6) ES-519, test record card;
(7) ES-614, counseling record and employability plan.

Section 3. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 3. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

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

(a) ETA-750 Part A, "Application for Alien Employment Certification", (Rev. 11/17);
(b) ETA-750 Part B, (Rev. 11/17);
(c) ETA-790, "Agricultural and Food Processing Clearance Order", (Rev. 7/07);
(d) ETA-9127, Foreign Labor Certification Quarterly Activity Report, (Rev. 7/06);
(e) Wage Survey Interview Record, (Rev. 7/07);
(f) H-2A(1), "Employer-Furnished Housing and Facilities with Housing, Safety and Health Check List", (Rev. 5/02);
(g) H-2A, "Field Audit", (Rev. 10/04);
(h) H-2A, "Housing Inspection", (Rev. 10/02);
(i) Kentucky H-2A, "Alien Labor Certification Program, Customer Satisfaction Survey", (Rev. 8/07);
(j) Office of Employment and Training Prevailing Wage Information Request, (Rev. 12/06);
(k) Office of Employment and Training Transmittal of Application for Alien Employment Certification, (Rev. 7/04);
(l) Office of Employment and Training Recruitment Notification, (Rev. 5/08);
(m) Form 8850, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit", (Rev. 6/07);
(n) ETA-9061, "Individual Characteristics Form Work Opportunity Tax Credit", (Rev. 12/06);
(o) ETA-9063, "Employer Certification Work Opportunity Tax Credit", (Rev. 12/06);
(p) TAA/TRA-855, "Request for Determination of Entitlement to TAA/TRA", (Rev. 4/06);
(q) TAA/TRA-855A, "Request for Employment Information", (Rev. 1/05);
(r) TAA/TRA-858, "Request for Occupational/Remedial Training and Allowances While in Training", (Rev. 8/05);
(s) TAA/TRA-888B, (Rev. 8/05);
(t) TAA/TRA-9042A, "Petition for Trade Adjustment Assistance.
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(TAA) and Alternative Trade Adjustment Assistance (ATAA). (Rev. 11/05):

(a) "TAA Certification of Training Waiver". (Rev. 4/07);
(b) ATAA-500A, "Verification of Employment". (Rev. 4/08);
(c) ATAA-500B, "Verification of Employment for Monthly Wage Supplement". (Rev. 4/08);
(d) ATAA-500C, "Request for Alternative Trade Adjustment Assistance". (Rev. 4/08);
(e) ATAA-501, "ATAA Trade Certification Employer Information". (Rev. 4/08);
(f) Kentucky HCTC-100, "Request for Temporary KY-HCTC". (Rev. 1/06);
(g) "Customer Services-Screens 1 through 11". (Rev. 5/02);
(h) "Customer Detail-Screens 1 through 14". (Rev. 5/02);
(i) "Comprehensive Assessment-Screens 1 through 10". (Rev. 5/02), and
(j) "WIA-20, Eligibility and Verification". (Rev. 10/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

Russell L. Salsman, Executive Director
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 11, 2008 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2008 at 10 a.m. EDT 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 August 19, 2008 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 September 2, 2008. 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: Terry Brogan, Assistant Director, Office of Employment and Training, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621, phone (502) 564-3906, fax (502) 564-7459.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Brogan

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation delineates those records or reports retained by the Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Employment and Training which are confidential and not subject to disclosure to third parties that either directly or indirectly identify clients or former clients of the programs listed within the regulation.
(b) The necessity of this administrative regulation: This regulation is needed to clarify those records or reports which should be confidential.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.280 designates the secretary of the cabinet as the individual responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will clarify which records or reports are confidential.
(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 records and reports utilized by the cabinet in conjunction with the appropriate federal agency to administer certain programs and share requisite information.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include records and reports relating to programs involving the utilization of foreign labor for agricultural and nonagricultural programs, Work Opportunity Tax Credits, Trade Adjustment Assistance and Trade Readjustment Act and Employ Kentucky Operating System.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 151B.280 provides that the secretary shall be responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client.
(d) How the amendment will assist in the effective administration of the statutes: This amendment lists those documents deemed confidential which are utilized by the cabinet in administering the appropriate programs.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 500,000 current or former clients of the specified programs will be assured that personal, identifying information specific to them shall be protected from unauthorized re-disclosure to third parties.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: None.
(g) 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.
(h) 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.
(i) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The clients and former clients will be assured that their personal information is protected from unauthorized re-disclosure.
(j) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(i) Initially: There is no cost associated with this amendment.
(j) On a continuing basis: There is no cost associated with this amendment.
(k) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is not necessary.
(l) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if an amendment: There are no fees or funding required to implement this amendment.
(m) 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? This amendment deals with the privacy rights of current and former clients of the cabinet, the confidentiality provisions are applied uniformly to all individuals' information and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Employment and Training.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.280
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency
LABOR CABINET
Department of Workers’ Claims
(AMENDMENT)


RELATES TO: KRS 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the Commissioner (Executive Director) of the Department (Office) of Workers’ Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner (Executive Director) to promulgate an administrative regulation establishing the workers’ compensation medical fee schedule for physicians. A schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) “Medical fee schedule” means the Workers’ Compensation Medical Fee Schedule for Physicians.

(2) “Physician” is defined by KHS 342 0011(33).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department (Office) of Workers’ Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care program approved by the commissioner (Executive Director) pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor, and [1]

(2) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department (Office) of Workers’ Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Dwight T. Lovan, Commissioner
APPROVED BY AGENCY: June 25, 2008
FILED BY LRC: July 1, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 10 a.m. (EST) at the offices of the Department of Workers’ Claims, Prevention Park, 657 Chamberlin Avenue, 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 September 2, 2008. 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: Carla H. Montgomery, General Counsel; Department of Workers’ Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for using the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: It is imperative to have fee schedules to control the medical costs of the workers’ compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

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

(a) How the amendment will change the existing administrative regulation: The medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The statute requires the schedules to be updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The medical fee schedule has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statute: The updated fee schedule assists the workers’
compensation program by updated fees for physicians to insure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organiza-
tions, or state and local governments affected by this administra-
tive regulation: All physicians and medical providers providing ser-
vices to injured workers pursuant to KRS Chapter 342, Injured
employees, insurance carriers, self-insurance groups, and self-
insured employers and employers, third party administrators.

(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, 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. Insurance carriers, self-insured groups,
self-insured employers, third party administrators, and medical
providers must purchase the new medical fee schedule to accura-
tely bill and pay for medical services. Other parties to workers’
compensation claims are only indirectly impacted by the new fee
schedule.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question
(3): Insurance carriers, self-insured groups, self-insured em-
ployers or third party administrators and medical providers can
purchase the fee schedule book with disk for $70 or the disk for
$35.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Medical providers will receive fair,
current, and reasonable fees for services provided to injured work-
ers. Injured workers will be treated by qualified medical providers.

(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: The contract for reviewing and updating the physi-
cian’s fee schedule and all fee schedules is $103,400.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
Department of Workers’ Claims normal budget is the source of
funding.

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

(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: This
administrative regulation sets forth an updated medical fee sche-
dule for physicians. Some fees have been updated to be fair, cur-
rrent, and reasonable, and this is similar treatment in the same com-
unity as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because
the updated fee schedule applies to all parties 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? All parts of govern-
   ment with employees.
3. Identify each state or federal statute or federal regulation
   that requires or authorizes the action taken by the administrative
   regulation. KRS 342.035
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.
   As an employer, there may be some increased costs for medical ser-
   vices. It is impossible to estimate not knowing what medical serv-
   ces will be needed by injured workers.

(a) How much revenue will this administrative regulation gen-
   erate for the state or local government (including cities, counties,
   fire departments, or school districts) for the first year? No revenue
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 revenue is generated.

(c) How much will it cost to administer this program for the first
   year? No new administration costs.

(d) How much will it cost to administer this program for sub-
   sequent years? No new administration 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:

LABOR CABINET
Department of Workers’ Claims
(Amendment)


RELATES TO: KRS 342.020, 342.035, 342.315
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035
requires the Commissioner(Executive-Director) of the Depart-
ment(Office) of Workers’ Claims to promulgate administrative
regulations to adopt a medical fee schedule for fees, charges and reim-
bursements under KRS 342.020. KRS 342.020 requires the em-
ployer to pay for hospital treatment, including nursing, medical, and
surgical supplies and appliances. This administrative regulation
regulates hospital fees for services and supplies provided to workers’
compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Durable medical equipment (DME)
means equipment that withstands repeated use and is used pri-
marily to serve a definite medical purpose.

(2) "Hospital" means a facility, surgical center, or psychiatric,
rehabilitative or other treatment or specialty center which is li-
censed pursuant to KRS 2165.105.

(3)(6) "Hospital-based practitioner" means a provider of med-
cal services who is an employee of the hospital and who is paid by
the hospital.
(4) "Implant" means an object or material inserted or crafted
into the body for prosthetic, therapeutic, diagnostic, or experimen-
tal purposes.

(5)(9) "Independent practitioner" means a physician or other
practitioner who performs services that are covered by the Work-
ers’ Compensation Medical Fee Schedule for Physicians on a con-
tract basis and who is not a regular employee of the hospital.
(6)(4) "Unbundling" means the practice of submitting separate
bills for services to a payor pursuant to this administrative regu-
lation which are billed to payers other than pursuant to this adminis-
trative regulation on a global basis.

(7)(9) "Global basis" means the practice of submitting a bill for
two (2) or more services as one (1) item.

(8)(6) "New hospital" means a hospital which has not com-
pleted its first fiscal year.

Section 2. Applicability. This administrative regulation shall
apply to all workers’ compensation patient hospital fees for each
hospital for each compensable service or supply provided on or
after the effective date of this administrative regulation.

Section 3. Calculation of Hospital’s Base and Adjusted Cost-to-
charge Ratio; Reimbursement. (1)(a) A hospital’s base cost-to-
charge ratio shall be based on the latest HCFA-2552 which has
been supplied to the Cabinet for Health Services, Department of
Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013
on file as of October 31 of each calendar year.

(b) The base cost-to-charge ratio shall be determined by divid-
ing the net expenses for allocation as reflected on Worksheet A,
Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthesiasts reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552.[1]

(c)(3)(i) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of twelve (12) percent-
tile; and (ii)

(c)(3)(iv) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) percentile addition, except for a hospital that services seventy (70) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services.

2. The adjusted cost-to-charge ratio for a hospital that services seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) percent.

(ii)(3)(v) The reimbursement to a hospital for services or supplies furnished to an employee which are comparable under KRS 342.020 shall be calculated by multiplying the hospital’s total allowable charges by its adjusted cost-to-charge ratio;

(b) Except for durable medical equipment (DME) and implants which shall be reimbursed at invoice plus twenty (20) percent or manufactured suggested invoice plus twenty (20) percent whichever is less.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner[executive-director] by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner[Executive-Director] of the Department[Office] of Workers' Claims.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the commissioner[executive-director] no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-Charge Ratio. (1)(a) The commissioner[executive-director] shall calculate cost-to-
charge ratios and notify each hospital of its adjusted cost-to-
charge ratio on or before February 1 of each calendar year;[1]

(b) A new hospital shall be assigned a cost-to-charge ratio of eighty (80) percentile until it has been in operation for one (1) full fiscal year; and[ ]

(c) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio of eighty (80) percentile.

(2) An assigned cost-to-charge ratio shall remain in full force
and effect until a new cost-to-charge ratio is assigned by the commissioner[executive-director].

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundary of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to the administrative regulation shall be submitted on a uniform billing form as required by 803 KAR 25:096 pursuant to KRS Chapter 216.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(a) A hospital providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate billing form required by 803 KAR 25:096 pursuant to KRS Chapter 216.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner[executive-director] setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the forms required by 803 KAR 25:096 pursuant to KRS Chapter 216 when billing for professional services and shall be compensated pursuant to the Workers' Compensation(Kentucky) Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the services under the Workers' Compensation Medical Fee Schedule for Physicians in these circumstances.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital.

(4) Unbundling shall not be practiced.

DWIGHT T. LOVAN, Commissioner
APPROVED BY AGENCY: June 25, 2008
FILED WITH LRC: July 1, 2008 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2008, at 10 a.m. (EST) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, 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. No notification of intent to attend 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 September 2, 2008. 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: Carla H. Montgomery, General Counsel, Department of Worker’s Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Carla H. Montgomery
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers’ compensation patients.
(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the Department of Workers’ Claims is charged with the duty of setting fee schedules, and KRS 342.020 requires that hospital treatment be reimbursed on behalf of injured workers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth how hospital fees and supplies are reimbursed.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements for charging and reimbursing for hospital treatment of injured employees.
(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: Durable Medical Equipment (DME) and implants are defined. The reimbursement for DME and implants is to be reimbursed at invoice plus 20% or manufactured suggested invoice plus 20%, whichever is less.

The necessity of the amendment to this administrative regulation: It is imperative to keep medical costs within the workers’ compensation system comparable to health insurance costs. Some charges for implants and DME had been five (5) times the costs of the equipment. The fees must be fair, current, and reasonable in comparison to fees paid by health insurers according to KRS 42035. Similar language is being used in the physician fee schedule, and the hospital fee schedule should be consistent to keep similar medical charges equitable.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments make the fees fair, current, and reasonable for similar treatment as paid by health insurers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify fee requirements for durable medical equipment and implants and render medical costs more reasonable. The certainty of these charges should reduce medical fee dispute issues in this area.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured employees, hospitals, medical providers, insurance carriers, self-insurance groups, individual self-insurers and third party administrators.

(a) 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:

(i) 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: Some hospitals must change billing for DME and implants to invoices plus 20% or manufacturers’ suggested invoice plus 20%.

(ii) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some hospitals may need to reduce charges for implants and DME. Other parties may see a reduction in costs rather than an increase.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive reduced prices for DME and implants. Anytime medical costs are reduced, employers could benefit on workers’ compensation insurance policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some hospitals may need to reduce charges for implants and DME. Other parties may see a reduction in costs rather than an increase.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive reduced prices for DME and implants. Anytime medical costs are reduced, employers could benefit on workers’ compensation insurance policies.

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

(a) Initially: The Department of Workers’ Claims will use normal budget to implement administrative regulation. There would be no 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: The Department of Workers’ Claims’ budget will be used which is restricted funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or funding will be increased. Fees charged by hospitals for DME and implants may be reduced.

(9) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Hospitals fees charged for implants and DME is reduced to make the charges, fair, current, and reasonable.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to all hospitals and other parties in an equal manner to a workers’ compensation claim.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of government with employees.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 342.035.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the current fiscal year. The administrative regulation is not expected to have a significant impact on state or local government agencies.

The impact of this administrative regulation on state and local government agencies is expected to be minimal. The regulations include fees for DME and implants in excess of 20%, which may reduce the costs for state and local governments. The fees are intended to provide a reasonable cost for these services.

(8) Other Explanation:


RELATES TO: KRS 304.17A-060, 304.17A-250
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304 2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the enforcement of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-250(1) requires the Executive Director of Insurance to define by administrative regulation one (1) standard health benefit plan. EO 2008-507, effective June 15, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes one (1) standard health benefit plan that may be offered by an insurer (provide-health-insurance-cover- age) in the individual and small group markets and establishes procedures for modifications to the standard health benefit plan.

Section 1. Definitions. (1) "Department means the Department of Insurance."

(2) "Health Insurance Advisory Council means the body established in accordance with KRS 304.17A-080."

(3) "Office means the Office of the Auditor of Public Accounts."

(4) "Standard health benefit plan means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders:

(a) Established by the department (office) in accordance with KRS 304.17A-250 and any other health insurance benefit mandates by the General Assembly; and

(b) Included in the Kentucky Standard Health Benefit Plan, HIPPC-SPI.

Section 2. Modification Process. (1) The standard health benefit plan shall remain in effect until the plan or any form is modified.
in accordance with the procedures established by this section.

(2) The standard health benefit plan may be modified each year and each modification shall apply to each policy or certificate issued or renewed on or after July 15.

(3) A person wishing to make a recommendation for modification of the standard health benefit plan shall:
(a) Submit the recommendation, in writing, to the Kentucky Department of Insurance, Division of Health Insurance Policy and Managed Care, by May 1 of the year preceding the year in which each modification is recommended for implementation;
(b) Explain the need for each recommended modification; and
(c) Provide a statement regarding the cost effect of each recommended modification.

(4) Prior to July 1 of each year:
(a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration;
(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with KRS 304.17A-250(3).
(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and
(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall accept or decline, in writing, to modify the standard health benefit plan.

(5) Each Insurer issuing, delivering, or renewing a standard health benefit plan shall:
(a) Implement each modification to the standard health benefit plan prescribed by the department; and
(b) Amend each policy form and rate filing to include modifications to the standard health benefit plan.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's Web site at http://dol.pr.ky.gov/kentucky/.

JOHN BURKHOLDER, Acting Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2008, at 9 a.m. (EST) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2008, five work 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6086, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines the standard health benefit plan and establishes procedures for modifying the standard health benefit plan.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-250(1), which states that the executive director shall define one standard health benefit plan, and to clarify the process for alterations, amendments, and replacements to the standard health benefit plan.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-250(1) states that the executive director shall define one standard health benefit plan. This administrative regulation defines "The Kentucky Standard Health Benefit Plan, HIPMO-SP1", (7/2006), which is incorporated by reference in this 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 statutes by defining the standard health benefit plan pursuant to KRS 304.17A-250(1) and by establishing procedures for recommending any annual modification to the standard health benefit plan.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will update the incorporated materials, clarify several provisions and comply with the requirements of KRS 13A, Implement recommendations from the Health Insurance Advisory Council, as authorized in KRS 304.17A-060, and comply with 2008 Ky Acts ch. 107, 119, and 169.
(b) The necessity of the amendment to this administrative regulation:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A change during the 2004 legislative session removed the requirement for all health insurers to offer the standard health benefit plan; therefore, the Kentucky Department of Insurance estimates that this administrative regulation will affect the Kentucky Access program and approximately five (5) Kentucky health insurers offering health benefit plans in the individual and small group market. Approximately 13,000 individuals are covered under a standard health benefit plan.
(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 Kentucky Access Program, which uses the standard health benefit plan as a basis for its plan options, and insurers offering the standard health benefit plan will be required to amend policies and certificates of coverage and modify computer systems, as necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Access Program and health insurers impacted by this administrative regulation routinely amend their plans yearly to comply with changing federal or state laws and approximately 13,000 individuals are covered under this plan; therefore no significant costs are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Insurers policies and certificates of coverage will be in compliance with 2008 Ky Acts ch. 107, 119, and 169 and this administrative regulation.

(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 on an initial basis are believed to be minimal, if any, for the Department of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Department of Insurance.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers offering the standard health benefit plan and Kentucky Access.

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 Department of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-250(1) requires the commissioner of insurance to define by administrative regulation one (1) standard health benefit plan that may provide health insurance coverage in the individual and small group markets. 2008 Ky Acts ch. 107, 119, and 189 created new and amended existing laws relating to coverage by insurers. This amendment to a regulation will include this coverage in the Kentucky Standard Health Benefit Plan, which is incorporated by reference in 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? No revenue for state government will be generated as a result of this 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? No revenue for state government will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Department of Insurance.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation in subsequent years are believed to be minimal, if any, for the Department of Insurance.

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:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:310. Prompt payment of claims reporting requirements.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-722(1), 304.17C-090(2)

NOTE: NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering a health benefit plan. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall submit reports as required under KRS 304.17A-722 pursuant to KRS 304.17C-090(2). EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes the reporting requirements of an insurer offering a health benefit plan and an insurer offering a limited health service benefit plan for the provision of dental-only benefits.

Section 1. Definitions. (1) *Adjudicate* is defined in KRS 304.17A-700(1).

(2) *Claims payment time frame* means the period of time established in KRS 304.17A-702(1).

(3) *Clean claim* is defined in KRS 304.17A-700(3).

(4) *Commissioner* means Commissioner of Insurance.

(5) *Contested claim* means a clean claim contested in accordance with KRS 304.17A-706(1).

(6) *Department* means Department of Insurance.

(7) *Executive director* means Executive Director of Insurance.

(8) *Health care provider* or *provider* is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18.

(9) *Insurer* is defined in KRS 304.17A-005(27).

(10) *Limited health service benefit plan* is defined in KRS 304.17C-010(5).

(11) *Office* means the Kentucky Office of Insurance.

(12) *Paid* means the act of payment by an insurer offering a health benefit plan or a limited health service benefit plan for the provision of dental-only benefits, its agent or designee of the amount required by KRS 304.17A-702(2)(a) or other appropriate amount on the payment date as determined pursuant to 806 KAR 17:360, Section 3(1).
Section 2. Insurer Offering a Health Benefit Plan Reporting Requirements. (a) What this administrative regulation does: This administrative regulation establishes the reporting requirements of an insurer offering a health benefit plan and an insurer offering a limited health service benefit plan for the provision of dental-only benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide insurance consumers and the format required for health insurers to report the payment of claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering a health benefit plan. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall submit reports as required under KRS 304.17A-722 pursuant to KRS 304.17C-090(2). This administrative regulation establishes format and timelines for these reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the format, timetables and clarifying procedures for submitting reports regarding the payment of claims to the Department of Insurance.

Section 3. Insurer Offering a Limited Health Service Benefit Plan Reporting Requirements. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall:

(1) Annually (beginning on June 30, 2007, and no later than June 30 of each year [thereafter], submit an annual report to the office on the prompt payment of claims as established under KRS 304.17C-090(2)); and

(2) Except for Section (1) of this administrative regulation, be subject to the requirements of an insurer offering a health benefit plan as established in this administrative regulation.

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

(a) "Prompt Payment Reporting Manual, HIPMC-CP-3" (01/2006); and
(b) "Affidavit, HIPMC-CP-2 (09/05)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's website at http://www.doi.ky.gov.

JOHN BURKHOLDER, Acting Commissioner
ROBERT D. VANCE Secretary
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 15, 2008 at 10 a.m.
PUBLIC HEARING PERIOD: None
COMMENTS TO BE HELD: A public hearing on this administrative regulation shall be held on August 29, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2008, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Melasa Rivera
(1) Provide a brief summary of:
health care provider and better prepared to comply with this administrative regulation.

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

(a) Initially: The Department of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Department of insurance does not anticipate any direct or indirect costs to implement the amendment to 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 source of funding to implement and enforce this administrative regulation is the existing budget of the Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department of Insurance does not anticipate that the implementation of this amendment will require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the definitions and incorporate revised forms. The amendment will apply equally to all Kentucky licensed health insurers offering a health benefit plan or limited health service benefit plan for the provision of dental-only benefits.

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 Insurance is promulgating this administrative regulation to clarify a definition and make conforming amendments to this administrative regulation. This clarification will not produce a significant impact to the Department of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes the reporting requirements for an insurer offering a health benefit plan and an issuer offering a limited health service plan for the provision of dental-only benefits.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate revenue starting with the second year for state or local governments.

(c) How much will it cost to administer this program for the first year? The Department of Insurance does not anticipate significant costs relating to the administration of this amendment to an existing administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? The Department of Insurance does not anticipate any significant costs relating to the administration of this administrative regulation during subsequent years.

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

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<th>Revenues (+/-):</th>
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<td>Expenditures (+/-):</td>
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<td>Other Explanation:</td>
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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:360. Prompt payment of claims.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-722(1), 304.17C-090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering health benefit plans. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall be subject to the provisions of KRS 304.17A-700 to 304.17A-730, except as provided in KRS 304.17C-090. EO 2006-507, effective June 18, 2006, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes requirements for insurers offering health benefit plans and insurers offering limited health service benefit plans for the provision of dental-only benefits.

Section 1. Definitions. (1) "Claimant" is defined in KRS 304.17A-700(3).

(2) "Commissioner" means Commissioner of Insurance

(3) "Covered person" is defined in KRS 304.17A-700(5).

(4) "Department" means Department of Insurance

(5) "Executive director" means Executive Director of the Office of Insurance.

(5)(4) "Health benefit plan" is defined in KRS 304.17A-005(22).

(6) "Health care clearhouse" means an entity that converts health care transactions into standardized formats and forwards them to an Insurer.

(7) "Insurer" means any insurer offering a health benefit plan as defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch.127, Part XII, sec.18.

(8) "(g) "Health claim attachments" is defined in KRS 304.17A-700(10).

(9) "Insurer" is defined in KRS 304.17A-005(27).

(10) "Limited health service benefit plan" is defined in KRS 304.17C-010(5).

(11) "Office" means the Office of Insurance.

Section 2. Requirements. (1) An attachment subject to the requirements of KRS 304.17A-706(2) shall be a standardized health claim attachment prescribed by 806 KAR 17:370.

(2) Pursuant to KRS 304.17A-704(4), an Insurer response to a claim status inquiry by a provider shall either:

(a) Advise of no record of receiving the claim; or

(b) Provide the date the claim was received by an Insurer, its agent, or designee, an Insurer reference number for the claim, and one (1) of the following dated actions:

1. Claim is in process but has not had a determination of denial, payment, contest, or suspension by the Insurer;

2. Claim denial, in whole or in part, and reason for denial;

3. Determination to pay claim, in whole or in part;

4. Claim suspension, in whole or in part, and reason for suspension; or
5. Claim contest, in whole or in part, and reason for contest.

Section 3. Claim Payment Time Frame. (1) The payment date of a claim shall be:
(a) The posting date of an electronic payment to a provider account;
(b) The postmark date of a nonelectronic payment mailed to a provider; or
(c) The documented date of nonmailed delivery of a nonelectronic payment received by a provider.

(2) An insurer, its agent, or designee shall be required, as part of the acknowledgment process in accordance with KRS 304.17A-704(2), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 19, to notify a provider, its billing agent, or designee that submitted the claim, of an attachment that is missing or in error, if required pursuant to KRS 304.17A-706(2) or 304.17A-720.

(3) Except for a claim involving an organ transplant, an insurer shall be in compliance with KRS 304.17A-702(1) if a clean claim is paid within:
(a) Thirty (30) days of receipt of the claim; or
(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 28th, 29th, or 30th day after the claim is received.

(4) An insurer shall be in compliance with KRS 304.17A-702(1) for a clean claim involving an organ transplant if the claim is paid within:
(a) Sixty (60) days of receipt of the claim; or
(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 56th, 59th, or 60th day after the claim is received.

(5) The claim payment time frame of KRS 304.17A-702(1) shall:
(a) Include the time a claim is with a health care clearinghouse acting on behalf of an insurer; and
(b) Not include the time a claim is with a health care clearinghouse acting on behalf of a provider.

Section 4. Payment of Interest. (1) The method used to calculate an interest payment required by:
(a) KRS 304.17A-730(1), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20, shall yield an amount not less than the result obtained by dividing the total number of days that a claim remains unpaid after the date payment was due by 365;
(b) Multiplying that quotient by the applicable interest rate established under KRS 304.17A-730(1), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20; and
(c) Multiplying that product by the unpaid amount of the claim owed.

(2) An interest payment shall identify the claim for which it is paid by including the following information:
(a) Name of covered person;
(b) Covered person's insurer identification number;
(c) Name of provider;
(d) Date of service;
(e) Amount of interest paid; and
(f) Insurer reference number for the claim.

(3) Except for nonpayment of interest by a limited health service benefit plan for the provision of dental-only benefits as established under KRS 304.17C-090(3), an insurer shall pay the interest required by KRS 304.17A-730, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20, within thirty (30) days after the date a claim is paid.

(4) An insurer shall not be required to pay interest on corrected payments made in accordance with KRS 304.17A-708(1).

Section 5. Contested Claims. (1) An insurer may contest a claim, pursuant to KRS 304.17A-706(1)(a) if an insurer, its agent, or designee has reasonable documented grounds, including:
(a) A covered person has notified the insurer that he has:
1. Another payment source; or
2. A preexisting condition;
(b) A provider has notified the insurer that a covered person has:
1. Another payment source; or
2. A preexisting condition;
(c) The insurer possesses file material establishing that:
1. Another insurer may be primarily responsible for the claim;
or
2. A preexisting condition exists;
(d) A health claim attachment indicates another payment source; or
(e) A billing instrument identifies another payment source or a preexisting condition.

(2) An insurer in possession of the documentation listed in subsection (1) of this section shall provide this information to a provider upon request.

Section 6. An insurer offering a limited health service benefit plan for the provision of dental-only benefits, its agent or designee shall be subject to the requirements established under this administrative regulation except for a requirement as established under Section 3(4) of this administrative regulation and KRS 304.17C-090.

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2008, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 until a 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 September 1, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone 502-564-6808, fax 502-564-2726

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for insurers offering health benefit plans and insurers offering limited health service benefit plans for the provision of dental-only benefits.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide instructions regarding the payment of claims.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-722(1) requires the Department to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering health benefit plans. An insurer offering a limited health service benefit plan for the provision of dental only benefits shall be subject to the provisions of KRS 304.17A-700 to 304.17A-730, except as provided in KRS 304.17C-090. This administrative regulation establishes requirements for insurers offering health benefit plans and insurers offering limited health service benefit plans for the provision of dental only benefits.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the necessary requirements regarding the payment of claims.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will clarify the definitions, and revise citations.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the definition of health care provider which was amended under 2008 Ky. Acts ch. 127, Part XII, sec.18 and to provide revised citations to KRS 304.17A-701, 703 through 730.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This amendment clarifies definitions, revises citations, and makes technical changes to comply with KRS Chapter 13A.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administrative of the statutes by clarifying definitions, revising citations, and making technical changes.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation affects health insurers offering a health benefit plan or a limited health service benefit plan for the provision of dental-only benefits. Approximately 40 health insurers are required to comply with the prompt payment of claims 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, 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: Since health insurers are currently required to comply with the administrative regulation, no additional actions will need to be taken by the affected insurers.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since insurers are currently required to comply with this regulation, the department does not anticipate health insurers will incur any additional costs as a result of the amendment to this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be more informed of amended definition of health care provider and better prepared to comply with this administrative regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Department of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.
(b) On a continuing basis: The Department of Insurance does not anticipate any direct or indirect costs to implement the amendment to 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 source of funding to implement and enforce this administrative regulation is the existing budget of the Department of Insurance.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department of Insurance does not anticipate that the implementation of this amendment will require an increase in fees or funding.
(8) State whether or not this administrative regulation establishes any fees or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees
(9) TIERING: Is being applied? No. This amendment to the administrative regulation will clarify the definitions. The amendment will apply equally to all Kentucky licensed health insurers offering a health benefit plan or limited health service benefit plan for the provision of dental-only benefits that are required to pay claims in accordance with KRS 304.17A-700 to 730.

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 cites, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cites, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance is promulgating this administrative regulation to clarify definitions and make conforming amendments to this administrative regulation. This clarification will not produce a significant impact to the Department of Insurance.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-722(1) requires the department to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering health benefit plans. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall be subject to the provisions of KRS 304.17A-700, except as provided in KRS 304.17C-090. This administrative regulation establishes requirements of an insurer offering a health benefit plan and an insurer offering a limited health service benefit plan for the provision of dental-only benefits.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cites, 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 cites, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.
(b) How much revenue will this administrative regulation generate for the state or local government (including cites, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.
(c) How much will it cost to administer this program for the first year? The Department of Insurance does not anticipate significant costs relating to the administration of this amendment to an existing administrative regulation during the first year.
(d) How much will it cost to administer this program for subsequent years? The Department of Insurance does not anticipate any significant costs relating to the administration of this administrative regulation 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:

PUBLIC PROTECTION CABINET
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:370. Standardized health claim attachments.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-720(1) requires the department to promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall be subject to the provisions of KRS 304.17A-700 to 304.17A-720, except as provided in KRS 304.17C-010. EQ 2009-507, effective June 16, 2009, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.

Section 1. Definitions. (1) "Clean claim" is defined in KRS 304.17A-700(3).
(2) "Health benefit plan" is defined in KRS 304.17A-005(22).
(3) "Health care provider" or "provider" is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18.
(4) "Health claim attachments" is defined in KRS 304.17A-700(10).
(5) "Limited health services benefit plan" is defined in KRS 304.17C-010(5).
(6) "Insurer" is defined in KRS 304.17A-005(27).
(7) "Practitioner" means an individual licensed or certified to provide a health care service in Kentucky.
(8) "Reparation obligor" is defined in KRS 304.39-020(13).

Section 2. Standardized Health Claim Attachments. If another payment source is identified by a provider, an insurer shall require the provider to include the following health claim attachments, as applicable, for a claim to qualify as a clean claim:
(1) An explanation of benefits statement or noncoverage notice from another payer;
(2) An electronic or paper-based Medicare remittance notice if the claim involved Medicare as a payer; and
(3) A record of all payments by a reparation obligor pursuant to KRS 304.39-010 to 304.39-340.

Section 3. Routinely-requested Health Claim Attachments. An insurer offering a health benefit plan or a limited health service benefit plan for dental only, may routinely request the following health claim attachments in accordance with KRS 304.17A-700(2), as applicable:
(1) A certification of medical necessity;
(2) A complete medical record, or part of a medical record, including:
(a) Discharge summary;
1. Patient identification, including name, age, gender, and medical record number;
2. Name of attending practitioner;
3. Dates of admission and discharge;
4. Final diagnosis;
5. Reason for the admission or visit;
6. Medical history;
7. Significant findings during length of stay or visit;
8. Procedures and treatments;
9. Patient condition at discharge;
10. Discharge medications; and
11. Discharge instructions;
(b) Emergency department report:
1. Patient identification, including name, age, gender, and medical record number;
2. Date of service;
3. Attending practitioner;
4. Chief complaint and symptoms;
5. History of present illness and physical exam;
6. Diagnostic test findings;
7. Clinical impression and diagnosis;
8. Treatment plan;
9. Discharge instructions; and
10. Practitioner orders;
(c) History and physical:
1. Patient identification, including name, age, gender, and medical record number;
2. Chief complaint;
3. Details of present illness;
4. Relevant past, social and family histories;
5. Inventory by body system;
6. Summary of psychological needs;
7. Report of relevant physical exam;
8. Statement relating to the conclusions or impressions drawn from the admission history and physical;
9. Statement relating to the course of action planned for this episode of care; and
10. Name of practitioner performing history and physical;
(d) Nurse's notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Vital signs with graphics, if available;
3. Intake and output record, if applicable;
4. Medication administration records;
5. Date of nurse's notes;
6. Nurse assessment;
7. Nursing intervention;
8. Observation; and
9. Name of nurse;
(e) Operative report:
1. Patient identification, including name, age, gender, and medical record number;
2. Date of procedure;
3. Operating practitioner;
4. Pre- and post-operative diagnoses;
5. List of procedures performed;
6. Operative description including indications and findings;
7. Anesthesia used, and
8. Specimens collected;
(f) Progress notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Discharge or treatment plan;
3. Practitioner orders;
4. Practitioner notes;
5. Attending practitioner name;
6. Results of tests and treatments;
7. Dates of notes; and
8. Chief complaint;
(g) Test results:
1. Patient identification, including name, age, gender, and medical record number;
2. Test findings, including date ordered and date completed; and
3. Ordering practitioner name;
(h) Practitioner orders or treatment plan, as applicable:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Ordering practitioner name; and
4. Order dates;
(i) Practitioner notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner notes; and
4. Dates of notes;
(j) Consult notes and reports:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Findings and recommendations including notes and reports; and
4. Dates of notes and reports;
(k) Anesthesia record:
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1. Patient identification, including name, age, gender, and medical record number;
2. Administering practitioner name;
3. Start and stop anesthesia times;
4. Route of administration;
5. Dates;
6. Notes;
7. Patient vital signs; and
8. Drug administered;
(l) Therapy notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner orders;
4. Treatment plan;
5. Number of treatments and dates;
6. Therapist's notes; and
7. Dates of notes;
(m) Office notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Any notes generated for dates of service; and
4. Dates of notes;
(n) Dental records; and
(o) Pharmacy records; and
(p) Certification and documentation as identified in 42 C.F.R. 441.203, 441.206, 441.207, 441.208, 441.250, 441.251, 441.255, 441.256, and 441.258; the following forms, as applicable, incorporated by reference in 907 KAR 3:006 as part of the physician manual appendices:
   (a) Certification for induced abortion or miscarriage (MAP-231);
   (b) Sterilization consent form (MAP-250); and
   (c) Hysterectomy consent form (MAP-261);
4. Itemized bill; and
5. Evidence of Medicare secondary payment pursuant to 42 C.F.R. 411.32.

JOHN BURKHOLDER, Acting Commissioner
ROBERT D. VANCE Secretary
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals desiring to be heard at this hearing shall notify this agency in writing by August 22, 2008, five (5) work days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by 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 September 2, 2008. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone 502-564-6088, fax 502-564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely-requested medical information health claim attachments.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide requirements for standardized health claim attachments and minimum requirements for routinely-requested medical information health claim attachments.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-720(1) requires the office to promulgate administrative regulations prescribing standardized health claim attachments to be used by an insurer offering a health benefit plan. KRS 304.17C-006, requires an insurer offering a limited health service benefit plan for the provision of dental only benefits to comply with the requirements of KRS 304.17A-700 through 304.17A-730. This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers, as identified in this regulation, by providing the requirements for standardized health claim attachments and minimum requirements for routinely-requested medical information health claim attachments.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will clarify the definition of health care provider, add definitions for health benefit plan and limited health service benefit plans, and provide statutory citations.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the definition of health care provider which was amended in 2006 Ky. Acts ch. 127, Part XII, sec.18.
(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This amendment clarifies a definition and provides statutory citations.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administrative of the statutes by clarifying a definition, adding definitions, and providing new statutory citations.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects health insurers who request additional information from providers when paying medical or health claims. Approximately 40 insurers currently offer health benefit plans or limited health service benefit plans 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: Since health insurers are currently required to comply with the existing administrative regulation, no additional actions are required on the part of these insurers.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since insurers currently require providers to submit these attachments, the attachment does not anticipate health insurers incurring additional costs as a result of the amendment to this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be better informed of the requirements for requesting health care attachments and be better prepared to comply with this administrative regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Department of Insurance does not anticipate
any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Department of Insurance does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for this implementation and enforcement of this administrative regulation? The source of funding to implement and enforce this administrative regulation is the existing budget of the Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department of Insurance does not anticipate that the implementation of this amendment will require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify a definition and incorporate a statutory citation. The amendment will apply equally to all Kentucky licensed health insurers doing business in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance is promulgating this administrative regulation to clarify a definition, add new definitions, make conforming amendments to this administrative regulation, and make technical amendments required under KRS Chapter 13A. This clarification will not produce a significant impact to the Department of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-720(1) requires the office to promulgate administrative regulations prescribing standardized health claim attachments to be used by Insurers. KRS 304.17C-090 requires Insurers offering a limited health service benefit plan for the provision of dental only services to comply with KRS 304.17A-700 to 304.17A-730. This administrative regulation establishes for standardized health claim attachments and minimum requirements for routinely-requested medical information health claim attachments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.
(b) How much will it cost to administer the program for the first year? The Department of Insurance does not anticipate significant costs relating to the administration of this amendment to an existing administrative regulation during the first year.
(c) How much will it cost to administer this program for subsequent years? The Department of Insurance does not anticipate any significant costs relating to the administration of this administrative regulation 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:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.215(5)(a) and 230.260(3)(c)

STATUTORY AUTHORITY: KRS 230.215, 230.260(3)(c) (Chapter 13A)

NECESSITY, FUNCTION, AND CONFORMANCE: KRS 230.215(2) and 230.260(3) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes guidelines for the participation of horses in horse race meetings. To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for horses entered to be raced.

Section 1. Registration Required. A horse shall not [no horse shall] be entered or raced in this state unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for the horse is on file with the racing secretary [except, however]  However, the stewards may for good cause [in their discretion] waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction. The Jockey Club registration certificate of each horse shall be filed with the horse identifier within forty-eight (48) hours after horse's arrival on the association grounds.

Section 2. Fingers Prohibited. (1) A horse shall not [no horse shall] be entered or raced in this state designated by a name other than the name under which the horse is currently registered with the Jockey Club in New York. If a horse's name is changed by the Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not [no person shall] at any time cause or permit the correct identity of a horse to be concealed or altered. A person shall not [no person shall] refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the racing association.

(3) A horse shall not [no horse shall] race in this state without a legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau.

(4) A horse shall not [no horse shall] be entered or raced in this state if previously involved in a "finger" case to the extent that:
(a) A person having control of such horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with the Jockey Club; or
(b) The person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 3. Denying. (1) A [any] horse on which a neuractomy has been performed shall have that [such] fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denervated horse to ensure [to ensure] that [such] fact is designated on the registration certificate or racing permit.

(2) A [any] horse whose ulnar, radial, or median nerve has been either blocked or removed [known as high nerve], or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) A horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neuractomy (known as low nerve), may be permitted to race if the provided [such] denerving has been reported by the trainer to the stewards, and
the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then no protest thereon shall be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then no protest thereon shall be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denied horses shall be posted in the racing secretary's office. A person shall not report a horse as having a neurectomy if in fact the horse has not had a neurectomy.

Section 4. Bleeders. A horse that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian. A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the authority veterinarian after consultation with the practicing veterinarian. If the commission veterinarian and the practicing veterinarian disagree on the removal of all of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee. The opinion of the third veterinarian shall be delivered to the secretary of the commission or his designee who shall make a final decision on the issue.

Section 5. Health Certificate Required. A horse shall not be stabled on association grounds unless within ten (10) days prior to arrival on association grounds, the horse has been examined by an accredited practicing veterinarian who shall certify the identity of the horse, temperature at time of examination, and that to the best of his or her knowledge and belief the horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites, and as to any other matters as may be required from time to time by the Kentucky State Veterinarian. Notice of this requirement shall accompany all applications and be included in the condition book.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. A maiden six (6) years of age or older which has made five (5) lifetime starts on the flat shall not be entered or start.

Section 8. Fillies and Mares Bred. Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race. A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office. A filly or mare that has been covered by a stallion shall be entered in a claiming race, unless a written release from the stallion owner is attached to the filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person.

(2) Is posted on a veterinarian's list, or stewards' list, or starter's list, or is suspended, in any racing jurisdiction.

(3) Has been administered any drug in violation of 810 KAR 1:018.

(4) Is blind or has seriously impaired vision.

(5) Is not correctly identified to the satisfaction of the stewards.

(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Whips and blinkers shall be used consistently on a horse. Permission to change use of any equipment used on a horse in its last previous start shall be obtained from the stewards. A horse's tongue may be tied down during a race with a clean bandage or gauze. A horse's bridle may weigh no more than two (2) pounds. Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather. War bodys shall be prohibited. A horse shall not race in ordinary training shoes. Bar shoes may be used for racing only with permission of the stewards.

(2) Use on a horse either in a race or workout of any goading device, chain, spurs, electrical or mechanical device, or appliance other than the ordinary whip which may be used to alter the speed of the horse, shall be prohibited.

(3) A whip shall be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper. A stinger or project[No] extending through the hole of a popper or any metal part on a whip shall not be permitted. Indiscriminate or brutal use on a horse of an ordinary whip, as determined by the stewards in their sole discretion, shall not be prohibited.

(4(a) The following shall be prohibited on the front shoes of thoroughbred horses while racing or training on all racing surfaces:

1. Horse shoes (rowing plates) which have toe and/or
2. Bends;
3. Jar casts;
4. Stickers; and
5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) War plates with a height no greater than two (2) millimeters shall be permitted on the front shoes of thoroughbred horses while racing or training.

Section 11. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary promptly. The racing secretary shall note any alteration in the sex of a horse on the horse's registration certificate.

Section 12. Postmortem Examination. Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and each horse which expires while stabled on a race track under jurisdiction of the racing commission, shall undergo a postmortem examination at the University of Kentucky at the discretion of the commission steward and the commission veterinarian.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 26, 2008, at 10 am, at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, KY 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Tuesday, August 19th, 2008, 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 Tuesday, September 2, 2008. 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
Commission, 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 Forgy, phone (859) 246 2040

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of horses in horse racing.
(b) The necessity of this administrative regulation: The regulation is necessary to promote the health and safety of horses.
(c) How this administrative regulation conforms to the content of the enabling statute: KRS 250.215, which grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning horses that participate in racing. For example, the regulation prohibits certain types of devices, provides rules for the use of blinders, riding crops, and horse shoes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation gives detailed guidance as to what practices and equipment can and cannot be used in conjunction with race horses.
(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 prohibits toe grabs and certain other traction devices on the front shoes of horses.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to prohibit the use of toe grabs and other traction devices, which are believed to increase the probability of horse breakdowns and injuries.
(c) How the amendment conforms to the content of the enabling statute: KRS 250.215 grants the commission broad authority to promulgate regulations governing horse racing. This amendment addresses important safety issues concerning horses.
(d) How the amendment will assist in the effective administration of the statutes: The amendment gives positive guidance as to the types of traction devices that are prohibited for use with horse shoes.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission issues licenses to approximately 17,000 persons and entities engaged in thoroughbred horse racing in Kentucky. These licenses are prohibited by the amendment to this regulation from using certain types of traction devices on the front shoes of horses. No government entities will be affected.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Persons and entities participating in horse racing will be prohibited by the amendment from using certain types of traction devices on the front shoes of horses.
(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 imposed to comply with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3); The possibility of horse breakdown and injury will be reduced by the prohibition on toe grabs and other traction devices.
(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.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect: The regulation will not impose additional costs upon any 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? No additional 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? 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:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing

(AMENDMENT)

810 KAR 1:025. Licensing thoroughbred racing.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.325(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation establishes the function of the administrative regulation to determine the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessee, lessee, lessee, race track, farm name, or other group of persons acting in concert.
(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access and to those individuals accompanying a licensee as permitted by the association.
Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission. License categories shall include the following and others as may be established by the commission:

(a) Racing participants and personnel including but not limited to the following: owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, former, vendor, mutual clerk, exercise rider, stable employee, and any employee listed in Section 6 of this administrative regulation;

(b) Racing officials;

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing relations, with lab duties which require their presence anywhere on association grounds while pari-mutuel wagering is being conducted;

(d) All persons, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds;

(e) Commission employees with lab duties which require their presence anywhere on association grounds; and

(f) Commission members.

(2) Licensing of associations. A person or other legal entity desiring to conduct standardized racing in the Commonwealth shall apply to the commission for an association license. An application shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:

(a) The name and address of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;

(b) The name and address of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or tithe;

(c) If the applicant is a corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly or through other corporations or legal entities, the applicant shall file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entity with the degree of ownership or type of interest pertaining to the ownership or interest;

(d) The names of racing officials and persons responsible for track security and fire protection;

(e) The proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any; and

(f) An operating report on forms prescribed by the commission if the applicant is currently licensed.

(3) The commission may require a person working at a training center not on association grounds, or at a facility which provides training to parimutuel works to obtain a valid license issued by the commission. The executive director, chief racing steward, or their designees may refuse entry or scratch any horse involving any person who, after requested to obtain a valid license, fails to or is unable to obtain a license.

(4) A person required to be licensed shall submit a completed written application on the form "License Application" (KHRA 25-01 (10/08)) or the Multi-Jurisdictional License Form, along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation. A conditional or probationary license may be issued by the Executive Director, Chief Racing Steward, or Director of Licensing upon submission of a written application.

Section 3. General License Application Requirements for All Applicants. (1) Any person, other than an association, required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(2) The application shall be made in writing on application forms and in the manner prescribed by the commission, including presentation of appropriate photo identification. An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation. The license application shall be reviewed and issued by commission personnel. The executive director, the chief steward, or the Director of Licenses shall have the authority to personally review and approve or deny a license application if the application is incomplete or if refusal or denial is appropriate pursuant to Section 15 of this administrative regulation.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his agent shall result in an immediate license suspension, revocation, refusal, denial, or imposition of a fine by the commission or the Chief Racing Steward.

(4) An application from a person whose age is not readily ascertainable by commission staff shall be accompanied by an attested copy of a birth certificate or work permit showing the applicant is sixteen (16) years of age or older.

(a) An applicant for licensing shall be a minimum of sixteen (16) years of age unless otherwise specified in these regulations. An applicant may be requested to provide a copy of a driver's license or her birth certificate. Persons under the age of eighteen (18) may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the parent or legal guardian is licensed by the commission. An application under this subsection must be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the stewards.

(c) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by each individual person who owns or controls a present or revocable interest in the horses.

(d) The commission shall provide notice to an applicant that the license application has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician, shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

(c) An application from a veterinary assistant shall be accompanied by a KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him as required by KRS Chapter 321.

(2) Farmers. An application from a person not previously licensed in the capacity of farmer shall submit a diploma or other document satisfying successful completion of a recognized farmer college or examination, or submit a letter of recommendation from an experienced farmer known to the stewards.

(3) Stable employee, occupational employee, vendor employee, in order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant must submit a KHRA Form 25-4 from his or her employer verifying em-
employment and workers' compensation coverage.
(4) Special event licensees. A special event license shall be issued to employees who are employed by an association only for the duration of a special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees (1) The following annual fees shall accompany the application and shall not be refundable:
(a) $150 - Owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;
(b) $100 - Racing secretary, assistant racing secretary, director of racing, assistant starter, staked race judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;
(c) Fifty ($50) dollars - veterinary assistant, veterinary technician, veterinary assistant, vendor, mutual employees, farm manager, farm agent;
(d) Twenty-five ($25) dollars - association employees, occupational employee, vendor employee, or any person employed by a contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting; horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association security department (including a policeman,.veterinarian, fireman, ambulance driver, or emergency medical technician), track superintendent, member of the maintenance department staff, admissions department manager or his or her employee, association concessions manager and employee, parking manager and employee, and all other employees employed by the association;
(e) Ten (10) dollars - exercise rider, special event mutual, special event occupational, or special event vendor employees; stable employees, including but not limited to stable foreman, exercise personnel, hot walker, groom, watchman, pony cart;
(2) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting. A license applicant may be required to furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multistate/National Licenses. In lieu of a license application from this jurisdiction, the commission may accept an ARCI Multi-State License and Information Form and the National Racing Compact form and license. A license applicant shall be required to pay the fee prescribed in Section 5 of this administrative regulation, in addition to any fee which may be prescribed by ARCI or NRC.

Section 8. Consent to Investigate by License Applicants and Licensees. The filing of an application for a license shall authorize the commission to do the following: (1) Investigate the criminal background, employment history, and racing history record of the applicant;
(2) Engage in research and interviews to determine the applicant's character and qualifications;
(3) Verify information provided by the applicant.

Section 9. Consent to Search and Seizure by Licensees. (1) By acceptance of a license, a licensee consents to search and inspection by the commission or its agents at any location described in KRS 230.060(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or KAR Title 810 of the Kentucky administrative regulations.
(2)(a) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, regardless of location.
(b) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.
(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly to the best of his or her knowledge to all questions asked by the commission or its representatives performing in racing matters.
(d) A licensee shall consent to out-of-competition testing at any time or place designated by the commission.

Section 10. Approval or Recommendations by Stewards. The Commission may designate certain categories of licensees which shall require the prior approval or recommendation of the stewards. If a license application does not match any established category, the application shall be submitted to the Executive Director, Chief Racing Steward, or Director of Licensing.

Section 11. Employer Responsibility. (1) The employment or having of any unlicensed person at a facility under the jurisdiction of the commission is prohibited, and may subject an employer to license suspension, denial, revocation, or other appropriate penalties under KRS Chapter 230 or KAR Title 810 or 811.
(2) Every employer shall report, within twenty-four (24) hours, the discharge of any licensed employee in writing to the commission or its designee, including the employee's name, occupation, and reason for the discharge.
(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.
(4) The license application of an employee shall be signed by the employer.
(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 12. Financial Responsibility. An applicant for a license may be required to submit evidence of financial responsibility to the commission and shall maintain financial responsibility during the period for which the license is issued. A licensee's failure to satisfy a final judgment rendered against him by a Kentucky court, or a domesticate judgment from another jurisdiction, for debts, services, or fees furnished him in Kentucky and used in the course of his or her licensed occupation, constitutes a failure to meet the financial responsibility requirements of KHS Chapter 230. If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked by the stewards until the licensee provides written documentation of satisfaction of the judgment to the stewards.

Section 13. Voluntary Withdrawal of License Application. A license applicant may withdraw his or her license application from the license review committee voluntarily. If the applicant chooses to withdraw his or her application, then this withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

Section 14. License Review Committee. (1) The executive director, Chief Racing Steward, or Director of Licensing may refer a license application to the License Review Committee in lieu of license denial or issuance.
(2) The License Review committee shall be composed of the executive director or his or her designee, the Director of Licensing or his or her designee, the Chief Steward or his or her designee, and at least one other commission member or commission staff member designated by the Executive Director. At least three (3) members of the committee shall participate in any license review committee meeting.
(3) If a referral to the committee is made, then no license shall be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee
to appear personally. If the committee is unable to make a favor-
able ruling on the license application, then the committee may give
the license applicant the opportunity to voluntarily withdraw his or
her license application in accordance with Section 13 of this admin-
istrative regulation. If the license applicant does not wish to volun-
tarily withdraw his or her application, then the committee shall deny
the application.

(4) The denial or refusal of the application shall be subject to
appeal to an administrative hearing in accordance with KRS Chap-
ter 13B.

(5) In the alternative, the commission, the License Review
Committee, or the executive director may refer the case directly to
the commission without denial or approval of the application.

Section 15. License Denial, Revocation, or Suspension. (1) The commission, executive director, Chief Racing Steward, or
Director of Licensing may refuse or deny a license application, and
the commission or Chief State Steward may suspend or revoke a
license, or otherwise penalize a licensee, or other person, for any of
the following reasons:

(a) The public interest for the purpose of maintaining proper
control over horse racing meetings or pari-mutuel wagering may be
adversely affected if the license is issued;

(b) The licensee or applicant has been convicted of a felony or
misdemeanor that could compromise the integrity of racing by the
applicant or licensee’s participation in racing;

(c) The licensee or applicant has had a license of the legally
constituted racing commission of a state, province, or country denied,
suspended, or revoked for violation of a statute, administrative
regulation, or other rule;

(d) The licensee or applicant is presently under suspension of
a license by the legally constituted racing commission of a state,
province, or country;

(e) The licensee or applicant has had a license issued by the
Commonwealth of Kentucky revoked, suspended, or denied;

(f) The licensee or applicant has applied for and received a
license at less than sixteen (16) years of age, except as permitted
in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepres-
tation, falsification, or omission of information in an application
for a license;

(h) The licensee or applicant has been elected, ruled off, or
excluded from racing association grounds in the Commonwealth of
Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to vi-
olate a Kentucky Revised Statute, administrative regulation, or
similar rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has perverted or attempted to
pervert a fair and impartial administration in connection with the rac-
ing industry or the breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause,
or participated in any way in an attempt to cause the pre-
arrangement of a race result, or has failed to report knowledge
of this kind of activity immediately to the stewards;

(l) The licensee or applicant has demonstrated financial in-
ability or responsibility by accumulating unpaid obligations, delin-
quencies, or obligations, or issuing drafts or checks that are dishonored or not paid;

(m) The licensee or applicant has failed to disclose to the
commission complete ownership or beneficial interest in a horse
entered to be raced;

(n) The licensee or applicant has misrepresented or attempted
to misrepresent facts in connection with the sale of a horse or other
matter pertaining to racing or registration of thoroughbreds;

(o) The licensee or applicant has pending criminal charges;

(p) The licensee or applicant has been convicted of a crime
involving bookmaking, touting, or similar pursuits or has consorted
with a person convicted of such an offense;

(q) The licensee or applicant has offered, promised, given,
accepted, or solicited a bribe in any form, direct or indirect, to
or by a person having any connection with the outcome of a race,
or failed to report promptly any connection of this nature immediately to the stewards;

(r) The licensee or applicant has abandoned, mistreated,
abused, neglected, or engaged in an act of cruelty to a horse;

(s) The licensee or applicant has engaged in conduct that is
against the best interest of horse racing, or compromises the inte-
grity of operations at a track, training facility, or satellite facility;

(t) The licensee or applicant has entered, aided, and abetted
the entry of a horse ineligible or unqualified for the race entered;

(u) The licensee or applicant has possessed on association
grounds, without written permission from the commission or the
Chief State Steward:

1. A firearm;

2. Any other appliance or device, other than an ordinary whip,
which could be used to alter the speed of a horse in a race or
workout;

(v) The licensee or applicant has violated any of the alcohol or
substance abuse provisions outlined in KRS Chapter 239 or 610
KYAR 1-06;

(w) The licensee or applicant has failed to comply with a writ-
en order or ruling of the commission, the stewards, or the judges
pertaining to a racing matter or investigation;

(x) The licensee or applicant has failed to answer truthfully
questions asked by the commission or its representatives pertain-
ing to a racing matter;

(y) The licensee or applicant has failed to return to an associa-
tion any purses, moneys, trophies, or awards paid in error or
erroneously distributed by the commission;

(z) The licensee or applicant has been intoxicated, used prof-
ane, abusive, or inappropriate language to interfere with a commis-
sion member, commission employee or agent, or racing official, while these
persons are in the course of discharging their duties;

(aa) The licensee or applicant has interfered with or obstructed
a member of the commission, a commission employee, or a racing
official while performing official duties;

(bb) The name of the licensee or applicant appears on the
Commonwealth of Kentucky's Revenue Cabinet's most recent tax
warrants list; and, the licensee or applicant's delinquent tax liability
has not been satisfied;

(cc) The licensee or applicant is unqualified to perform the
duties for which the license is issued;

(dd) The licensee or applicant has discontinued or is ineligible
for the activity for which the license is issued, or for which a
previous or existing license was issued;

(ee) The licensee or applicant has made a material misrepres-
tation of information in an application for a license;

(ff) The licensee or applicant has failed to comply with the
Commission or its representatives pertaining to a racing matter;

(gg) The licensee or applicant has failed to pay a required fee
or fine, or has otherwise failed to comply with Kentucky statutes or
administrative regulations;

(hh) The licensee or applicant has failed to comply with a writ-
en order or ruling of the commission or the Chief State Racing
Steward;

(ii) The licensee or applicant has failed to advise the commis-
sion of changes in the application information as required by Sec-
 tion 17 of this administrative regulation;

(jj) The licensee or applicant has failed to comply with the tem-
porary license requirements of Section 18 of this administrative
regulation;

(kk) The licensee or applicant has violated the photo identifi-
cation badge requirements of Section 21 of this administrative regu-
lation;

(ll) The licensee or applicant has altered, damaged, or aban-
donned any person in violation of any statute or administrative regulation pertaining to
horse racing;

(mm) The licensee or applicant has employed or harbored an
unlicensed person required by these administrative regulations to
be licensed;

(nn) The licensee or applicant, being a person other than a
licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, hypodermic syringe, or other de-
vice which could be used to administer any substance to a horse;

2. A medication, stimulant, sedative, depressant, local anes-
thetic, or any foreign substance prohibited by the commission.
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(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS Chapter 133.

Section 16. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is pulled off, excluded, or ejected from a race track in Kentucky or another jurisdiction, the commission may require reinstatement at that track before a license shall be granted by the commission.

Section 17. Changes in Application Information. (1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license application, including the following:
   (a) Current legal name;
   (b) Current address;
   (c) Permanent address;
   (d) Criminal convictions;
   (e) Pending criminal complaints;
   (f) License denials or license suspensions of ten (10) days or more in other jurisdictions;
   (g) License revocations or fines of $500 or more in other jurisdictions;
   (h) Racing related disciplinary charges pending in other jurisdictions;
   (i) Withdrawal with or without prejudice, of a license application by the licensee in any jurisdiction.

(2) A change in application information shall be submitted in writing upon the appropriate commission form, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change.

Section 18. Temporary Licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or an application for a temporary license on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. Failure by the applicant to supply a name, social security number and mailing address for a temporary license is grounds for refusal. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirtieth day pending completion of all licensing procedures. Upon expiration of the thirty (30) day temporary license, the legal owner of the entrant's horse is required to file with the commission a signed statement that the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except as prohibited by Section 20 of this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest. (1) The commission, the License Review Committee, the chief state steward, or their designees shall deny or refuse to process the license of a person, and the commission or the presiding judge shall revoke or suspend the license of a person, whose spouse, immediate family member or other person in a similar relationship holds a license with which the commission or chief state steward find to be a conflict of interest. The commission, the License Review Committee, and the chief state steward shall determine matters involving conflicts of interest among competing participants.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, or has any financial interest in a horse entered in a race, shall not be employed in a race in a manner as to have an interest in the outcome of a race.

(4) A person who is licensed in one state to be an owner may not be licensed in another state to be an owner for the same horse at the same time.

(5) The commission, the chief state steward, or their designees shall deny or refuse to process the license of a person, or suspend or revoke the license of a person, whose spouse, immediate family member, or other person in a similar relationship holds a license with which the commission or chief state steward find to be a conflict of interest.

(6) The commission, the License Review Committee, and the chief state steward shall determine matters involving conflicts of interest among competing participants.

(7) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(8) A person who is licensed as an owner or trainer, or has any financial interest in a horse entered in a race, shall not be employed in a race in a manner as to have an interest in the outcome of a race.
from association grounds.

Section 24. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "Licensing Application", KHRC 25-01, (10/06);
(b) "Licensing Ownership/Control Form", KHRC 25-02, (10/06);
(c) "Change in License Information Form", KHRC 25-03,
(10/06); (d) "Verification of Employment and Workers Compen-
sation Form", KHRC 25-04, (10/06);
(e) "Termination of Stable Employee Form", KHRC 25-05,
(10/06).
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Horse Racing
Commission, 180 Waverly Parkway, Building B, Lexington,
Lexington, Kentucky 40511, Monday-Friday, 8 a.m. to 4:30 p.m., or can be
(1) Information provided on or with licence-application shall be
complete and correct.
(3) A licensee shall abide by all rulings, and decisions of the
stewards and all decisions of the stewards shall remain in force
unless reversed or modified by the commission upon proper ap-
pel.
(a) Rulings and decisions of the stewards may be appealed to
the commission, except those made by the stewards as to:
1. Findings of fact as occurred during and incident to the run-
ing of a race and
2. Determination of the extent of disqualification of horses in
race for fouls committed during the race.
(b) Exempted rulings and decisions of the stewards shall be
final with no right of review by the commission.
(3)(c) A licensee shall consent to a reasonable search of his
property in possession by the commission or its representa-
tives, the property being restricted to that on association-gounds
and including tack rooms, living or sleeping quarters, motor ve-
ciholes, trucks, boxes, and containers of any sort.
(c) Licensees shall consent to seizure of any object which may
be evidence indicating a violation of an administrative regulation.
(d) A licensee shall cooperate in every way with the com-
misson or its representatives during the conduct of an investiga-
tion, to include responding correctly under oath to the best of his know-
ledge to all questions asked by the commission or its representa-
tives pertaining to racing matters.
(4) A licensed trainer shall be responsible for the condition
of horses in his charge and shall be held to a high standard of care
in taking all precautions as are reasonable and necessary to safe-
guard the horses from tampering.
(b) Upon a finding of a positive test result for a prohibited med-
ication, stimulant, sedative, depressant, local anesthetic, or any
foreign substance prohibited by the commission, the trainer shall
be held responsible for the test results unless the trainer can establish that
the stimulant, sedative, depressant, local anesthetic, or any foreign sub-
stance was administered to the horse by another person.

Section 2. The commission may issue a licence to an associa-
tion which applies for a licence to conduct a thoroughbred-race
meeting on days on which the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of
a Licence. The commission in its discretion may refuse to issue a
licence to an applicant, or may suspend or revoke a licence issued,
or order other disciplinary measures, on the following grounds:
(1) Denial of a licence to an applicant, or suspension or revoca-
tion of a licence in another racing jurisdiction, the commission
may require reinstatement in the original racing jurisdiction where
the applicant was denied a licence or where his licence was sus-
pended or revoked;
(2) Conviction of a crime or violation of any statute or adminis-
trative regulation;
(3) Falsehood, microrepresentation, or omission of required
information in a licence application to the commission.
(a) Failure to disclose to the commission complete ownership
or beneficial interest in a horse entered to be raced; or
(b) Misrepresentation or attempted misrepresentation in con-
nection with the sale of a horse or other matter pertaining to racing
or registration of thoroughbreds;
(4) Making false or misleading statements to the commission
or the stewards in an application for a licence or in the course of an
investigation;
(5) Failure to comply with any order or ruling of the commis-
sion, stewards, or racing officials;
(6) Ownership of any interest in, or participation by any manner
in, any bookmaking, pool-selling, touting, betting solicitation, or illegal
enterprise, or association with any person so engaged in those
activities;
(7) Applying for an a licence by a person less than six-
sixteen (16) years of age;
(8) Being incompetent or unqualified in the performance of the
activity for which the licence is granted as determined by standard
examinations prescribed by the stewards;
(9) Intoxication, use or profanity, fighting or any conduct of a
disorderly nature on association grounds;
(10) Employment or harboring of unlicensed persons required
by those administrative regulations to be licensed;
(11) Discontinuance of or incapability for activity for which li-
cence was issued;
(12) Possession on association grounds, without written per-
mission from the commission or stewards, of:
(a) Firearms;
(b) Battery, buzzers, or electrical device; or
(c) Other appliance other than an ordinary whip which could be
used to alter the speed of a horse in a race or workout;
(13) Possession on association grounds, by a person other
than a licensed veterinarian of:
(a) Hypodermic needle, or hypodermic syringe, or other device
which could be used to administer any substance to a horse; or
(b) Medication, stimulant, sedative, depressant, local anesthe-
tic, or any foreign substance prohibited by the commission;
(14) Use of profane, abusive, or insulting language to or inter-
ference with a commissioner, member of the commission staff, or
racing officials, while these persons are in the discharge of their
duties;
(15) Cruelty to a horse or neglect of a horse entrusted to a
licensee's care;
(16) Offering, promising, giving, accepting, or soliciting a bribe
in any form, directly or indirectly, to or by a person having any con-
nection with the outcome of a race, or failure to report knowledge
of same immediately to the stewards;
(17) Causing, or attempting to cause, or participation in any
way in any attempt to cause the re-arrangement of a race result,
or failure to report knowledge of same immediately to the stewards;
(18) Entering, or aiding and abetting the entering of, a horse
in a race after it has been disqualified, or the entering of a horse
on false papers, or entry of a horse under false name;
(19) Drug addiction, bad moral character, intemperate habits,
bad reputation for honesty, truth and veracity, or involvement in a
subject of public notoriety as involved in any activity which, in
the opinion of the commission, may be inconsistent with the best in-
terests of racing by reflection on the honesty and integrity of the sport
of racing, or association with persons so characterized; or
(20) Aiding or abetting any person in violation of any adminis-
trative regulation of the commission.
(21) A licensee's failure to satisfy a judgment rendered against
him, for goods, supplies, services or fees furnished him and used
in the course of his licensed occupation, constitutes a failure to
meet the financial responsibility requirements of KRS 230.310.
Look of a showing of legal and just cause for not satisfying said
judgment is inconsistent with the best interests of racing and the
maintenance of honesty, integrity and high quality thereof and is
cause for suspension of the licence and denial of any renewal of
came.

Section 4. Licences—Applications for Associations. Persons
or legal entities desiring to conduct thoroughbred racing in the Com-
mission shall apply to: the commission for an association li-
cense—Applications shall not be acted upon by the commission
until the commission is satisfied a full disclosure has been made.
The application shall contain:
(1) Names and addresses of all officers, directors, stockhold-
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ere; and other persons owning or controlling a beneficial interest in
the association with the degree of ownership or type of interest
shown;

(2) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessee of mortgaged or equity;

(3) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly or through other corporations or legal entities, shall similarly file with the application listing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entity with the degree of ownership or type of interest pertaining to the ownership or interest.

(4) Names of racing officials and persons responsible for track security and fire protection;

(b) Proposed purse schedule, showing minimum purses, average daily distribution, added money for each stakes, if any;

(c) An operating report on forms prescribed by the commission if the applicant is currently licensed.

Section 5—License Application for Participants in Racing.—(1) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth of Kentucky may apply to the commission for a license.

(2) The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(3) An application from a person not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activities permitted by the license.

(4) An application from a person whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(5) An application from a person, corporation, partnership, lessor, or other entity involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individuals who own or control a present or prospective interest in the horses.

(b) An application shall not be acted upon by the commission until the commission has satisfied a full disclosure has been made.

(c) An application from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(d) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the steward in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in that state.

(e) An application from a person desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.

(f) An application from a person not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee unless the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.

(6) The following annual fee shall accompany the application and shall not be refundable:

(a) $100—owner, trainer, assistant trainer, veterinarian, farrier, apprentice farrier, jockey, jockey agent, racing official, steward, testing laboratory employee, racing department employee, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license;

(b) Seventy-five (75) dollars—jockey apprentice;

(c) Fifty (50) dollars—veterinarian assistant, dental technician, stable area supplier license for suppliers of horse feed, tack, medication, or feed vendors, mutual employee, farm manager, farm agent;

(d) Twenty-five (25) dollars—association employee, occupational employee, vendor employee, or any person employed by a cooperator or commonwealth and which employment requires their presence at association grounds during a race meeting, photo finish operator, film patrol, television production employees, association security department including policemen, watchmen, firemen, ambulance drivers, emergency medical technicians, track superfundent, maintenance department staff, admissions department manager and employees, association concession manager and employees, parking manager, and employees, all other persons employed by the association;

(e) Ten (10) dollars—special event mutual employee license.

(f) For a temporary permit to participate in the activity for which a license application was made pending administrative processing and final action on license application by the commission.

Section 6—Licensing Committee.—(1) The commission may appoint a licensing committee which may include the executive director and commission steward or their designated representative.

(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to security check, for final action.

(3) The licensing committee may issue to a licensee an association license application or license for the activity for which a license application was made pending administrative processing and final action on license application by the commission.

Section 7—The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 8—Possession of License Required.—A person required to be licensed by this administrative regulation shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. Licenses specified in Section 6(9)(a), (b), (c), (d), and (e) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times. An owner shall not be required to have a color photograph included on his or her license.

Section 8.—Incorporation by Reference.—The following material is incorporated by reference:

(a) "Licensing Application," KRC 15(10)(02);

(b) "Race Track License Application," KRC 15(10)(11); and

(c) "Corporative Discouragement," KRC 17(12)(01).

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:00 p.m.

ROBERT BECK, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

public hearing on this administrative regulation shall be held on Tuesday, August 26th, 2008, at 10 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 attending this hearing shall notify the Kentucky Horse Racing Commission in writing by Tuesday, August 19th, 2008, 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 Tuesday, September 2, 2008. 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.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy, phone 859-246-2040

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, 810 KAR 1:025 governs the licensing of individual participants in thoroughbred horse racing in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for thoroughbred racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred licensing pursuant to KRS 230.215(2) and 230.260(3) which authorize the commission to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS Chapters 230, 290, and 230.310 provide statutory criteria for the licensing of participants in Kentucky racing.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the conditions upon which licensees may be granted by the commission.
(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 contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, in sure that there is adequate funding for operational costs of the commission. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for thoroughbred racing, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.
(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding thoroughbred licenses.
(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: Approximately 17,000 thoroughbred licenses are issued in a calendar year to a variety of licenses, including owners, trainers, assistant trainers, jockeys, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees.
(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: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $150 will apply to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians. This fee increase will affect approximately 8,000 license applicants in these categories.
(a) List the actions that each of the regulated entities identified in question (3) will have to take: to comply with this administrative regulation or amendment: All will file an updated application in the 2009 licensing year.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) to obtain or maintain a license? There will be a $50 increase in licensing fees to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice to them of the qualifications to obtain a license, and of the licensing procedures.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.
(a) Initially: N/A
(b) On a continuing basis: N/A
(c) Benefit is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Operational budget of KHRC.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation will not require an increase in fees, expect as described in (4).
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in (4).
(9) TIERING: Tiering does not apply because the updates in the licensing regulation shall apply to all participants in horse racing 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? Kentucky Horse Racing commission.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260(3), 230.290, and 230.310.
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. Will increase funding for thoroughbred racing by approximately $400,000.
(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? See above.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See above.
(c) How much will it cost to administer this program for the first year? No additional costs.
(d) How much will it cost to administer this program for subsequent years? N/A.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
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Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Authority
Division of Licensing

(Amendment)

811 KAR 1:070. Licensing Standardbred Racing (Licensing; owners, drivers, trainers, and grooms).


STATUTORY AUTHORITY: KRS 230.215(2), 230.260(4), 230.300(1); R(230.260)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Commission the authority to regulate conditions under which standardbred racing shall be conducted in Kentucky. This administrative regulation establishes licensing procedures and requirements for participation in standardbred racing. It regulates conditions under which standardbred racing shall be conducted in Kentucky. The function of this administrative regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, and grooms.

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate company, corporation, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to Be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the Commission without a valid license issued by the Commission. In addition, owners, owner/trainers, owner/driver, owner/trainer/drivers, trainers, drivers, driver/trainers, must also have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky. License categories shall include the following and others as may be established by the Commission:

(a) Racing participants and personnel including but not limited to the following: owner, owner/trainer, owner/driver, owner/trainer/driver, trainer, driver, driver/trainer, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, farrier, vendor, mutual clerks, stable employee, and any employee listed in Section 5 of this administrative regulation.

(b) Racing officials:

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing patrons, with job duties which require their presence anywhere on association grounds while pari-mutuel wagering is being conducted.

(d) Sole proprietors, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds.

(e) Commission employees with job duties which require their presence anywhere on association grounds; and

(1) Commission members.

(2) Lessors and lessees. Any horse under lease shall race in the name of the lessee and a copy of such lease must be filed with the clerk of the race. No horse shall be under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor must be licensed by the Commission, prior to post. Persons violating this administrative regulation may be fined, suspended or expelled by the Commission or presiding judge.

(3) The commission may require a person working at a training center not on association grounds, or at a facility which provides information concerning trained public qualifying races, to obtain a valid license issued by the Commission. The executive director, presiding judge, or their lawful successor, may require that any horse involving any person who, after requested to obtain a valid license, fails to or is unable to obtain a license.

(4) A person required to be licensed shall submit a completed written application on the form "Licensing Application" (KHCRR 25-01 (1008) or the Multi-jurisdictional License Form), along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation. A conditional or probationary license may be issued by the executive director, presiding judge, or Director of Licensing upon submission of a written application.

Section 3. General License Application Requirements for all Applicants. (1) Any person, other than an association, required to be licensed by Section 2 of this administrative regulation and desiring to participate in standardbred racing in the Commonwealth may apply to the commission for a license.

(2) The application shall be made in writing on application forms and in the manner prescribed by the commission, including presentation of appropriate photo identification. An application may be submitted on or after the first day of a month preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation. The license application shall be reviewed and issued by Commission personnel. The executive director, the presiding judge, or the Director of Licensing shall have the authority to personally review and refuse or deny a license application if the application is incomplete or if refusal or denial is appropriate pursuant to Section 15 of this administrative regulation.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license suspension, revocation, denial, or imposition of a fine by the Commission or the presiding judge.

(4) An application from a person whose age is not readily ascertainable by commission staff shall be accompanied by an attested copy of a birth certificate or work permit showing the applicant is sixteen (16) years of age or older.

(5) An applicant for a license shall be a minimum of sixteen (16) years of age unless lessor is a legal ward of another, or other as specified in these regulations. An applicant may be required to submit a certified copy of his or her birth certificate. Persons under the age of eighteen (18) may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(6) The commission may grant an owner's license to a person less than sixteen (16) years of age if the parent or legal guardian is licensed by the Commission. An application under this subsection must be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the judges.

(5) An application from a person or entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents that fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall provide notice to an applicant that the license application has been issued, denied, or referred. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Driver. A person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association, Standardbred Canada, or an appropriate International
harness racing governing agency. Both licenses shall be presented to the clerk of course before driving. Pending issuance of a valid license by the United States Trotting Association, the commission may, at its discretion, issue a provisional or full driver's license to an applicant who qualifies under this administrative regulation.

(2) A person sixty (60) years of age or older who has never held a type of driver's license previously shall not be eligible for a driver license.

(3) General qualifications for a provisional (P) and full (A) driver's license. An applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:
   (a) The applicant shall not have been convicted of a crime described in KRS 335B 011(4), or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.
   (b) The applicant shall submit evidence of his or her ability to drive in a race and, if he or she is a new applicant, the evidence shall include the equivalent of one (1) year's training experience. A new applicant for a driver license shall be approved by the presiding judge and the District Six Track Committee.
   (c) The applicant shall be at least eighteen (18) years of age.
   (d) The applicant shall furnish a completed application form.
   (e) The applicant shall submit satisfactory evidence of an eye examination indicating 20/20 corrected vision in both eyes, or if one (1) eye is blind, at least 20/20 corrected vision in the other eye, and, upon request, shall submit evidence of physical and mental ability or submit to a physical examination.
   (f) The applicant shall be licensed by a qualified judge or his or her designee, a license applicant may be required to satisfactorily complete in the discretion of the presiding judge a written examination at a designated time and place to determine his or her qualifications to drive and his or her knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to a written test, shall be required to satisfactorily complete in the discretion of the presiding judge a written test before becoming eligible to obtain a license in a higher category.

(4) Special qualifications for provisional (P) driver licenses.
   (a) A provisional driver license valid only for participation at fairs, main events, qualifying races, and extended pari-mutuel meetings may be issued by the commission if the applicant meets the following qualifications:
   1. The applicant has obtained at least twelve (12) satisfactory qualifying drives within a consecutive twelve (12) month period, or fifteen (15) satisfactory qualifying drives within a two (2) year period; and
   2. The applicant has received the approval of the Presiding Judge and the District Six Track Committee.
   (b) An application for a provisional license to drive an extended pari-mutuel track may be considered as a qualifying drive.
   (c) A driver holding a qualifying-fair license shall not be considered for advancement to a Provisional license until he or she has had at least six (6) months driving experience while holding a qualifying-fair license, or has had at least three (3) months driving experience while holding a qualifying-fair license and twenty (20) satisfactory qualifying drives, and he or she has the unanimous consent of the presiding judge and the District Six Track Committee.
   (d) At the discretion of the presiding judge, a qualifying driver who has had satisfactory drives at fairs or in amateur races conducted at county fairs may be given credit for not more than three-fourths (3/4) of those drives toward the requisite number of qualifying drives required for advancement to a provisional license.
   (e) In determining an applicant's qualifications for a provisional license, the presiding judge shall consider each qualifying drive and shall not deem a drive to be unsatisfactory based solely upon the failure of the horse to go in qualifying time.
   (f) The presiding judge and the District Six Track Committee shall examine the applicant's ability to harness and equip a horse properly and to establish his or her proficiency in handling the animal.
   (g) Upon satisfactory recommendations from both the presiding judge and the District Six Track Committee the applicant shall be granted a Provisional license for a probationary term of fifteen (15) pari-mutuel starts.

(h) Upon satisfactory completion of the probationary pari-mutuel races as described above, and with the approval of the presiding judge, a provisional license shall be issued by the commission.

(5) Special qualifications for full (A) driver license. A full license valid for all race meetings may be issued by the Commission if the applicant meets the following qualifications:
   (a) Driving experience. The applicant meets one of the following experience criteria:
   1. The applicant had at least one (1) year of driving experience while holding a provisional driver license, as well as twenty-five (25) satisfactory pari-mutuel starts in the twelve (12) month period beginning with the issuance of the provisional license;
   2. The applicant has at least one (1) year of driving experience while holding a provisional driver license, but made at least fifty (50) satisfactory pari-mutuel starts; or
   3. The applicant made twenty-five (25) satisfactory extended pari-mutuel starts, or starts at grand circuit meetings in the two (2) year calendar period preceding the date of the application, provided he or she has had at least fifty (50) satisfactory starts;
   (b) Win requirement. The applicant shall have at least ten (10) wins at extended pari-mutuel meetings while holding a provisional license, and shall meet the provisions of this rule, or must have at least five (5) wins at extended pari-mutuel meetings while holding a provisional license and obtain the unanimous consent of the presiding judge and the District Six Track Committee.
   (c) Trainer. An applicant for a trainer license shall show proof that he or she is duly licensed by the United States Trotting Association and shall meet the requirements set forth in 811 KAR 1:085, Sections 1, 2, 3, 5, and 14, and 811 KAR 1:090. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

(7) Veterinary Persons. Any application for a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by evidence that the person is currently licensed as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky, and KHRF Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

(c) An application from a veterinarian assistant shall be accompanied by a KHRF Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him as required by KRS Chapter 321.

(8) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a recognized farmer's course or examination, or submit a letter of recommendation from an experienced farmer known to the judge.

(9) Stable employees, occupational employees, vendor employees. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant must submit a KHRF Form 25-4 from his or her employer verifying employment and workers' compensation coverage.

(10) Special event licensees. A special event license shall be issued to employees who are employed by an association only for the duration of the special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed seven (7) calendar days.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable.

(a) $25 - owner, trainer, driver, owner-trainer-driver, owner-purse, purse-trainer, purse-driver, assistant trainer, veterinarian, claiming license, and temporary license;

(b) $100 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, farrier, judge, clerk of course, charter, testing
laboratory employee, racing department employee, valet, and outsider.

c. Fifty ($50) dollars - veterinary assistant, veterinary technician, veterinary technologist, vendor, mutual employee, farm manager, farm agent.

d. Twenty-five ($25) dollars - association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, photo finish operator, film patrol crew member, television production employees, member of an association security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track steward, member of maintenance department staff, admissions department manager or his or her employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association.

e. Ten ($10) dollars - special event mutual, special event occupational, or special event vendor employee, including but not limited to stable foreman, exercise personnel, hotwalker, groom, watchman, pony person.

(1) Five ($5) dollars - stable employee.

(2) A replacement fee for a duplicate license shall be ten ($10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting. A license applicant may be required to furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the Commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. In lieu of a license application from this jurisdiction, the commission may accept an ARCI Multi-State License and Information Form and the National Racing Compact form and license. A license applicant shall be required to pay the fee prescribed in Section 3 of this administrative regulation. In addition to any fee which may be prescribed by ARCI or NRC.

Section 8. Consent to Investigate by License Applicants and Licensees. The filing of an application for a license shall authorize the commission to do the following:

(1) Investigate the applicant's background, employment history, and racing history record of the applicant;

(2) Engage in research and interviews to determine the applicant's character and qualifications;

(3) Verify information provided by the applicant.

Section 9. Consent to Search and Seizure by License Licensees.

(a) By acceptance of a license, a licensees consents to search and inspection by the Commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or KAR Title 810.

(b) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tack rooms, living or sleeping quarters, motor vehicles, trucks, boxes, and containers of any sort, regardless of location.

(c) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.

(d) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly to the best of his or her knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(e) A licensee shall consent to an out-of-competition testing at any time or place designated by the commission.

Section 10. Approval or Recommendations by Judges. The commission may designate certain categories of licensees which shall require the prior approval or recommendation of an eligible judge. If a license application does not meet any established category, the application shall be submitted to the executive director, presiding judge, or Director of Licensing.

Section 11. Employer Responsibility. (1) The employment or harboring of any unlicensed person at a facility under the jurisdiction of the commission is prohibited. An employer shall have the right to license suspension, denial, revocation, or other appropriate penalty under KRS Chapter 230 or KAR Title 810 or 811.

(2) Every employer shall report, within twenty-four (24) hours, the discharge of any licensed employee in writing to the commission or its designee, including the employee's name, occupation, and reason for the discharge.

(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(4) A license application of an employee shall be signed by the employer.

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 12. Financial Responsibility. An applicant for a license may be required to submit evidence of financial responsibility to the commission and shall maintain financial responsibility during the period for which the license is issued. A licensee's failure to satisfy a final judgment rendered against him by a Kentucky court, or a domesticated judgment from another jurisdiction, for failure to supply services, goods, or the other, constitutes the failure to meet the financial responsibility requirements of KRS 230.310. If the licensee fails to truly deliver the service or goods, or the other, the license may be suspended or revoked by the presiding judge until the license provides written documentation of satisfaction of the judgment to the presiding judge.

Section 13. Voluntary Withdrawal of License Application. A license applicant may withdraw a license application at any time. If the applicant chooses to voluntarily withdraw his or her application, then this withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

Section 14. License Review Committee. (1) The Executive director, presiding judge or Director of Licensing may refer a license application to the License Review Committee in lieu of license denial or issuance.

(2) The License Review Committee shall be composed of the Executive director or his or her designate, the Director of Licensing or his or her designate, the presiding judge or his or her designate and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any licensing review committee meeting.

(3) If a referral to the committee is made, then no license shall be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4) The denial of the application shall be subject to appeal to an administrative hearing in accordance with KRS Chapter 13B.

(5) In the alternative, the Commission, the License Review Committee or the Executive Director may refer the case directly to
Section 15, License Denial, Revocation, or Suspension. (1) The commission, executive director, presiding judge or director of licensing, may refuse, or deny a license application, and the commission or the presiding judge may suspend a license, revoke, or otherwise penalize a licensee, or any person, for any of the following reasons:

(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be adversely affected if the license is issued;

(b) The licensee or applicant has been convicted of a felony or misdemeanor that could compromise the integrity of racing by the applicants or licensee's participation in racing;

(c) The license or applicant has had a license of the legally constituted racing or gaming commission of a state, province, or country denied, suspended, revoked for violation of a statute, administrative regulation, or other rule;

(d) The licensee or applicant is presently under suspension of a license by the legally constituted racing commission of a state, province, or country;

(e) The licensee or applicant has had a license issued by the Commonwealth of Kentucky revoked, suspended, or denied;

(f) The licensee or applicant has applied and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been elected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The license or applicant has violated or attempted to violate any of the Kentucky Revised Statutes, administrative regulations, or similar rule respecting horse racing or any jurisdiction;

(j) The license or applicant has permeated or attempted to permeate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the prearrangement of a race result, or has failed to report knowledge of such activity immediately to the judges;

(l) The licensee or applicant has demonstrated financial irresponsibility by accumulating unpaid obligations, defaults on obligations, or issuing drafts or checks that are dishonored or not paid;

(m) The license or applicant has failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of standardbreds;

(o) The licensee or applicant has pending criminal charges;

(p) The licensee or applicant has been convicted of a crime involving bookmaking, betting, or similar pursuits or has consorted with a person convicted of such an offense;

(q) The license or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the judges;

(r) The license or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(s) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operators at a track, training facility, or satellite facility;

(t) The licensee or applicant has entered, aided and abetted the entry of a horse ineligible or disqualified for the race entered;

(u) The licensee or applicant has possessed on association grounds, without written permission from the commission or the presiding judge:

1. A firearm;
2. Any other appliance or device, other than an ordinary who, which could be used to alter the speed of a horse in a race or workout;

(v) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 811 KAR 1:950;

(w) The license or applicant has failed to comply with a written order or ruling of the commission or the judges pertaining to a racing matter or investigation;

(x) The licensee or applicant has not answered truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(y) The licensees or applicants to return any association any prize money, trophies, or awards paid in error or ordered redistributed by the commission;

(z) The licensees or applicants have participated in or engaged any conduct of a disorderly nature on association grounds which includes, but is not limited to:

1. Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of the commission;

2. Failure to drive when programmed unless excused by the judges;

3. Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he is carded to drive;

4. Fighting;

5. Assault;

6. Offensive and profane language;

7. Smoking on the track in colors during actual racing hours;

8. Warming up a horse prior to racing without colors;

9. Disturbing the peace;

10. Refusing to take a breath analyzer test when directed by the presiding judge;

11. Failure to wear safety vest while warming up or racing;

(a) The licensees or applicants have used profane, abusive, or insulting language to or interfered with a commission member, commission employee, or agent, or racing official, while those persons are in the course of discharging their duties;

(b) The license or applicant has interfered with or obstructed a member of the commission, an commission employee, or a racing official while performing official duties;

(c) The license or applicant appears on the commonwealth of Kentucky's Revenue Cabinet's most recent tax warrant list, and the applicant's delinquent tax liability has not been satisfied;

(d) The license or applicant is disqualified for the duties for which the license is issued;

(e) The license or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(f) The license or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(g) The license or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with Kentucky Revised Statutes or administrative regulations;

(h) The license or applicant failed to comply with a written directive or ruling of the commission or the presiding judge;

(i) The license or applicant has failed to advise the commission of changes in the application information as required by Section 17 of this administrative regulation;

(j) The license or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;

(k) The license or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;

(l) The license or applicant has aided or abetted any person in violation of any Kentucky Revised Statute or administrative regulation pertaining to horse racing;

(m) The license or applicant has employed or harbored an unlicensed person required by these administrative regulations to be licensed;

(n) The license or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;
or
2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by the commission.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the presiding judge and to the ARCL by the Division of Licensing, whereby other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A license applicant may appeal the suspension, revocation, or denial in accordance with KRS Chapter 13B.

Section 16. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded or ejected from a racetrack in Kentucky or in another jurisdiction, the commission may require reinstatement at that track before a license shall be granted by the commission.

Section 17. Changes in Application Information. (1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license application, including the following:

(a) Current legal name;
(b) Marital status;
(c) Permanent address;
(d) Pending criminal complaints;
(e) Criminal convictions;
(f) License denials and license suspensions of ten (10) days or more;
(g) License revocations or fines of five hundred dollars ($500) or more in other jurisdictions;
(h) Racing related disciplinary charges pending in other jurisdictions; and
(i) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

(2) A change in application information shall be submitted in writing upon the appropriate commission form, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change.

Section 18. Temporary Licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or an application for a temporary license on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. Failure by the applicant to supply a name, social security number and mailing address for a temporary license shall not result in a refusal. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirtieth day pending completion of all licensing procedures. Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except when prohibited by Section 20 of this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest. (1) The commission, the License Review Committee, the Presiding Judge, or their designees shall deny or refuse to process the license of a person, and the commission or the presiding judge shall revoke or suspend the license of a person, whose spouse, immediate family member or other person in a similar relationship holds a license which the commission or judges find to be a conflict of interest. The commission, the License Review Committee, and the presiding judge shall determine matters involving conflicts of interest among competing participants.

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(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, or has any financial interest in a horse entered in a race, shall not be employed or licensed in that race as any of the following:

(a) Racing official;
(b) Assistant starter;
(c) Practicing veterinarian;
(d) Veterinary technician/veterinary technologist;
(e) Officer or managing employee;
(f) Track maintenance supervisor or employee;
(g) Outlier;
(h) Race track security employee;
(i) Farmer;
(j) Photo finish operator;
(k) Horsemens's bookkeeper;
(l) Racing chemist; and
(m) Testing laboratory employee.

(4) Veterinary technicians and veterinary assistants shall not be licensed in any other capacity that allows access to the stable area.

(5) More than one license to participate in racing may be granted to a person except when prohibited by this administrative regulation due to a potential conflict of interest.

Section 21. License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). These photo identification badges are available to licensees upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The judges or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) Manufacture or possession of a false license photo identification badge shall be grounds for suspension, revocation, or denial of a license.

(6) Licensee credentials (photo identification badges) are the property of the Commission and must be surrendered to the Executive Director, the judges, a Commission Director of Security or Licensing, or their designees, upon request.

Section 22. Duties of Licensees. (1) A licensee shall be knowledgeable of these administrative regulations and, by acceptance of the license, agrees to abide by these administrative regulations.

(2) A licensee shall report to track security or the judges any knowledge the licensee has that a violation of these rules has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the judges and the commission, and all decisions by the judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the judges shall be appealed to the commission, except those made by the judges as to:

(a) Findings of fact as occurred during and incident to the running of a race;
(b) A determination of the extent of disqualification of horses in a race for fouls committed during the race;
(c) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.
(d) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of the rules of the commission, or any wrongdoings by any person and cooperate in any subsequent investigation.
Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Licensing Application", KHRC 25-01, (10/08);
(b) "Licensing Ownership/Control Form", KHRC 25-02, (10/08);
(c) "Change in License Information Form", KHRC 25-03, (10/08);
(d) "Verification of Employment and Workers Compensation Form", KHRC 25-04, (10/08);
(e) "Termination of Stable Employee Form", (KHRC 25-05 10/08).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4053 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m., or can be viewed at www.khrc.com. Owners, every-person-owning a horse that is entered at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. The application shall be in the form provided by the commission and shall be filed at any commission office. The license shall be presented to the clerk of the course at the time the horse is entered in a race.

Section 25. Leased Horse. Any horse under lease shall race in the name of the lessee and a copy of such lease must be filed with the Kentucky Racing Commission. No horse shall race under lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and the lessee is a current license of the commission in good standing. Persons violating this administrative regulation shall be fined, suspended or expelled.

Section 26. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Such application shall be in forms provided by the commission. Applications may be filed at any commission office. Such license shall be presented to the clerk of course before driving. Pending a valid license by the United States Trotting Association the commission may, at its discretion, issue a provisional or full driver's license to those who qualify as set by this administrative regulation.

Section 27. Qualification for a Provisional and Full Driver's License. (1) Every applicant for a provisional or full driver's license shall meet the following requirements:
(a) Not have been convicted of a crime described in KRS 235.010 or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting;
(b) Be at least eighteen (18) years of age;
(c) Be at least eighteen (18) years of age;
(d) Be of good moral character;
(e) Have completed a form of an eye examination indicating a 20/40 corrected vision in both eyes, or if one eye blind, at least 20/30 corrected vision in the other eye, and, if requested, submit evidence of physical and mental ability and/or submit to a physical examination;
(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.
(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.
(2) Any applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.
(3) A full license shall be granted to an applicant who qualifies for a provisional license and has acquired:
(a) At least one (1) year's driving experience while holding a provisional license from the United States Trotting Association;
(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutual meeting;
(c) In the event a person is involved in an accident on the track, the commission may order the person to submit to a physical examination and the examination shall be completed within thirty (30) days from the request or his license may be suspended until compliance.
(4) All penalties imposed on any driver may be recorded on the reverse side of his commission driver's license by the preceding judge.
(5) The Kentucky Racing Commission reserves the right to require any driver to take a physical examination at any time.

Section 28. Trainer's Application for License. Any person in his license shall show proof that he is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 511 KAR 4.085, Sections 1, 2, 3, 6, and 14, and 511 KAR 1.090, Section 6.

Section 29. Absence of Trainer. Any licensed trainer is absent from a race meeting for more than six (6) days, it shall be the duty of his trainer to appoint and have properly licensed a new trainer of record.

Section 30. Groome's Application for License. Any person for a license as a groom must satisfy the commission that he possesses the necessary qualifications, both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 31. The holder of a license issued by the United States Trotting Association for the calendar year shall be presumed to be qualified to receive a license.
(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified; however, if the horse does not meet the standards of the meeting, the horse shall be placed on the truthful list. If a horse is held solely for qualifying drivers, the race may not be charted. A race solely for qualifying drivers must have more than four (4) starters.

Section 32. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:
(1) Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of this commission;
(2) Failure to drive when programmed unless excused by the judges;
(3) Drunk intoxicating beverages within four (4) hours of the first post time of the program on which he is entered to drive;
(4) Fighting;
(5) Assaults;
(6) Offensive and profane language;
(7) Smoking on the track in color during the horse's racing hours;
(8) Warming-up a horse prior to racing without color;
(9) Disturbing the peace;
(10) Refusing to take a breathalyzer test when directed by the preceding judge, deputy commissioner (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 33. Colors and Helmet. Drivers must wear distinguish-
ing colors, and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judge they are properly dressed. From the time it becomes necessary to wear colors before the race, no one will be permitted to jog, train, warm up or drive a horse during a race meet licensed by the Kentucky Racing Commission unless he or she is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation’s 1984 Standard For Protective Headgear For Use in Horse Racing. This standard is hereby incorporated by reference. Any equestrian-helmet-bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.

Section 11. Misconduct in Colors. Any driver-wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed $100 for each such offense.

Section 12. Driver Charge. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both, by order of the judges.

Section 13. Amateur Definition. An amateur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14. Registered Color Drivers. Holding an ‘A’ license or drivers with a ‘V’ license who formerly held an ‘A’ license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.

Section 15. Incorporation by Reference. (1) The Application for Owner’s License, June 1993; Driver’s Application for License, June 1993; Provisional and Full Driver’s Application for License, June 1993, are incorporated by reference.

(2) Application forms may be inspected, copied, or obtained at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH AGENCY: July 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 26, 2008, at 10 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 Tuesday, August 19th, 2008, 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 Tuesday, September 2, 2008. 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 Forgy

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, 811 KAR 1:025, governs the licensing of individual participants in standardbred horse racing in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for standardbred racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred licensing pursuant to KRS 230.215(2) and 230.26(3) which authorize the Commission to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.290 and 230.310 provide statutory criteria for the licensing of participants in Kentucky racing. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the conditions upon which licenses may be granted by the commission.

(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 contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, in insure that there is adequate funding for operational costs of the commission. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for standardbred racing, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.
(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding thoroughbred licenses.
(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: Approximately 2,000 standardbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, drivers, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees. How well do these categories represent the individuals 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: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $125 will apply to owners, trainers, assistant trainers, drivers, and veterinarians. This increase in fees will impact approximately 1,500 license applicants in these categories.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All will file an updated application in the 2009 licensing year.
(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 comply with the updates to the licensing regulations. There will be a $25 increase in licensing fees to owners, trainers, assistant trainers, drivers, and veterinarians.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better business to them of the qualifications to obtain a license, and of the licensing procedure.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.

(a) initially, N/A
Section 1. [Citation of Administrative Regulation. This administrative regulation may be cited as "The Kentucky School Sanitation Regulation."]

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

(1) "Cabinet" means the Cabinet for Health and Family Services and its designated agents.

(2) "Designated agents" means local health department environmentalists that are duly registered sanitarians/environmental health specialists.

(3) "Local Board of Education" means a duly elected or appointed Board, any private agency, or organization that operates, controls, or supervises a school or system of schools.

(4) (9) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a school.

(5) (4) "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the 12th grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children.

(6) (6) "Semipermanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facility and not made a fixed portion of any existing school structure.

(7) (16) "Tempered water" means a water temperature of at least ninety (90) degrees Fahrenheit to a maximum temperature of 110 degrees Fahrenheit[406°F].

(8) "Approved water supply" means the source of the water that is to be from a properly located and protected public water supply system or other source that the Environmental and Public Protection Cabinet Drinking Water Branch has sampled and the water analyzed, and found to be safe and sanitary and in quality and quantity in accordance with 401 KAR Chapter 8 and subsequently approved by the Environmental and Public Protection Cabinet Drinking Water Branch.

(9) "Approved sewer disposal system" means a sewage disposal system approved by the Department for Public Health consistent with 401 KAR 10:055, Section 1(2).

Section 3. Water Supply. (1) The water supply shall be portable and from an approved public water supply, if available. If an approved public water supply is not available, the school shall be developed and operated pursuant to applicable requirements of the Environmental and Public Protection Cabinet; if an approved public water supply subsequently becomes available, connections shall be made to it and the school supply shall be discontinued.

(2) The water supply shall be of adequate quantity and quality and sufficient pressure to permit unrestricted use.

(3) Alternative delivery methods may be used only in schools of fifty-five (55) or less and only with formal written approval by the Environmental and Public Protection Cabinet.

(4) All drinking fountain installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains portable drinking water containers may be used. If portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet, and shall be maintained in a sanitary condition. If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewer system, if available. If a public sewer is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet.
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g (and) the Environmental and Public Protection Cabinet; if a public sewer system subsequently becomes available, connections shall be made to it and the school's private school sewage disposal system shall be discontinued.

(2) All plumbing shall comply with the State Plumbing Code.

(3) Private sewage disposal systems shall be operated in a manner that does not create a nuisance or possible hazard to public health. Non-water carriage toilets may be utilized if consistent with 390 KAR 10:085, Section 1(2).

(4) Alternative methods may be used only in schools of thirty-five (35) or less and only with formal written approval by the Cabinet for Health and Family Services.

(5) All private sewage disposal systems shall be disposed of in an approved sewage disposal system. For schools of thirty-five (35) or less and where the school premises do not have running potable water under pressure, the pupil shall be supplied with potable water from an approved public water supply or an approved water supply in an area of residence for hand-washing purposes, in a basin, or a sink, with cold water, or a spout, in an approved sanitary manner.

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

Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities pursuant to the requirements of the State Plumbing Code.

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

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

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

(5) All electric light fixtures shall be provided with heat and cold tempered glass under pressure.

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

(7) For a parochial school of thirty-five (35) or less students where the school premises do not have running potable water under pressure:

(a) The pupils shall be provided with potable water from an approved public water supply, if available, or a private water supply approved by the Environmental and Public Protection Cabinet Drinking Water Branch for hand washing purposes that meets the following requirements:

1. The water shall be placed in an insulated container that:
   a. Is rated to keep the temperature of the water from dropping below 50 to 110 degrees for a period of two (2) hours;
   b. Holds a minimum of ten (10) gallons of water; and
   c. Has a spigot that is capable of allowing water to run continuously without being held or depressed by hand in order to allow both hands to be washed together;

2. The temperature of the water shall be a minimum of 90 degrees and shall not exceed 110 degrees when placed in the container;

3. If the water in the container falls below 90 degrees, it shall be reheated to 90 degrees or replaced with water that meets the requirements of subparagraph 2 of this paragraph;

4. The amount of water in the container shall be inspected at least twice during the school day and replenished as necessary to keep a supply of water constantly available during the entire school day;

(b) A record shall be kept showing that the water has been inspected and replenished as required by paragraph (a) of this subsection;

(c) The wastewater generated from hand washing shall be disposed of in an approved sewage disposal system.

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

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

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

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

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

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

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

(4) School buildings shall maintain a minimum indoor temperature for occupied spaces of sixty-eight degrees Fahrenheit at a point measured thirty (30) inches above the floor. The installation of portable space heaters shall not be used to achieve compliance.

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

(6) Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for that use. All poisonous, caustic, and combustible materials shall be stored in a separate area and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is - 434 -
pressly prohibited.

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

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:
(a) Compresses and bandages to include:
   1. A one (1) inch compress-on adhesive;
   2. Assorted sterile bandage compresses in individual packages;
   3. Triangular bandages (2 in. x 2 in.) and (4 in. x 4 in.) (five (5) x-two (2) and five (5) x-four (4)); and
   4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.
(b) Fire extinguishers for board spills;
(c) Adhesive tape;
(d) Scissors;
(e) Forceps (two (2) inch splinter);
(f) Toothpicks;
(g) Paper cups;
(h) Disposable facial tissues;
(i) Aromatic spints of ammonia;
(j) Thermometer;
(k) Soap;
(l) Petroleum jelly;
(m) Biohazard waste bags;
(n) Nonlatex gloves;
(o) Cotton balls;
(p) One-way resuscitation mask;
(q) Water source or saline;
(r) Ice packs (chemical ice bags);
(s) Resealable plastic bags;
(t) Telephone number of the nearest Poison Control Center;
(u) Safety pins; and
(v) Flashlight with spare batteries.

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multimedia or Standard First Aid courses to render trained aid in case of injury.

(3) All play areas shall be designed, landscaped, and protected to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and releveled at regular intervals. Sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained pursuant to the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other nonapproved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(2) If a representative of the cabinet makes an inspection of a school, he shall record his findings on Form DFS-301, "School Inspection Report", and provide the principal or head teacher with a copy. The inspection report shall:
(a) Set forth the specific violation(s) if found;
(b) Establish a specific and reasonable period of time for the correction of the violation(s) found;
(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in further action being taken; and
(d) Advise the party inspected of its right to request a hearing on Form DFS-212, "Request for Hearing" before the cabinet. The request shall be filed within ten (10) days of the completed inspection.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1,400.

(4) Following inspections of school buildings and premises required by this administrative regulation, the cabinet shall report suspected or noncompliance with applicable requirements of other state agencies to those agencies.

Section 10. Plan review of future construction. No person shall construct or extensively alter a school, or convert an existing structure for use as a school, until construction plans and specifications for such construction or alteration, showing layout, arrangements, and construction materials, and the location, size, and type of fixed equipment and facilities and a plumbing riser diagram, have been submitted to and reviewed first by the Cabinet's designer or the cabinet prior to submission to the Environment and Public Protection Cabinet for final approval before such work is begun.

Section 11. Existing Facilities and Equipment. Notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing schools on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

WILLIAM D. HACKER, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 9 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Franklin, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 2, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Vonia L. Grabed, RS

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes uniform standards for schools and
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includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment. (c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 205.520 to promulgate the rules necessary to implement the regulations promulgated by the secretary of the Cabinet for Health and Family Services for the regulation and control of the matters set out below and shall formulate, promulgate, establish, and execute policies, plans, and programs relating to all matters of public health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation satisfies the criteria for sanctioning violations and the inspection process for schools in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation provides specific provisions for the inspection of schools of 35 or less children to use alternative methods in order to meet the requirements of existing sanitation regulations and removes two such provisions for the same schools. This amendment also adds a requirement that all schools with at least 66 degrees be, and an amendment to require that school construction or alteration plans be submitted to the Local Health Department's Environmental Health Section and that these plans be approved prior to construction or alteration of a school.

(b) The necessity of the amendment to this administrative regulation: The provisions that are being removed or made more specific were deemed unconstitutional by a circuit court judge. The added amendments are to bring the current regulation in line with the International Building Code.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provision of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth minimum sanitary standards for schools in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all schools in the Commonwealth of KY.

(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 with this administrative regulation or amendment: Regulated entities will be required to follow specific alternative provisions in this regulation for schools of 35 or less children in order to meet the requirements of existing sanitation standards, maintain all habitable areas of any school at least 66 degrees, and ensure that school construction or alteration plans be submitted to the Local Health Department's Environmental Health Section and that these plans be approved prior to construction or alteration of a school.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of building the schools and operating and maintaining the school in a safe and sanitary manner will not change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Kentucky school children will attend schools that conform to safety and sanitation standards designed to protect student health and safety.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(c) Cost of the funding to be used for the implementation and enforcement of this administrative regulation: Schools are currently exempt from permitting fees and remain so under this change. The Department for Public Health use general fund dollars allocated by the general assembly to implement and enforce this regulation. No increase costs to the Department are required to implement 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 is necessary. Schools are exempt from fees.

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

(9) TIERING: Is tiering applied? Yes. Tiering is applied in this regulation. Tiering was appropriate in this administrative regulation because the administrative regulation sets different requirements for hand washing capacity for parochial schools of less than 35 students where the privies do not have potable water from an approved source under the pressure available.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 counties and all school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194.050, 211.090, 211.180, 212.210, and 212.990.

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, schools are exempt from paying permit fees.

(c) How much will it cost to administer this program for the first year? Schools are exempt from paying permit and inspection fees thus the program costs are paid for by general funds.

(d) How much will it cost to administer this program for subsequent years? Schools are exempt from paying permit and inspection fees thus the program costs are paid for by general funds.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services
Division of Provider Operations
(AMIendment)

907 KAR 1:025 Dental services.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(9) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to dental services.

Section 1. Definitions. (1) "Comprehensive orthodontic" means
a medically necessary dental service for treatment of a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a procedure that is performed:

(a) For removing thick or dense deposits on the teeth which is required if tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, or gum disease; and

(b) Separately from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

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

(5) "Disabling malocclusion" means that a patient has a condition that meets the criteria established in Section 13(7) of this administrative regulation.

(6) "Direct practitioner contact" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional practitioner resources; or

(b) Is clinically integral to the performance of the primary procedure.

(8) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

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

(10) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

(11) "Other licensed medical professional" means a health care provider other than a dentist who has been approved to practice a medical specialty by the appropriate licensure board.

(12) "Prepayment review" or "PPR" means a departmental review of a claim to determine if the requirements of this administrative regulation are met prior to authorizing payment.

(13) "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(14) "Provider" is defined in KRS 205.845(7).

(15) "Recipient" is defined in KRS 205.845(5).

(16) "Resident" is defined in 42 C.F.R. 415.152.

(17) "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation. (1) A participating provider shall be licensed as a provider in the state in which the practice is located.

(2) A participating provider shall comply with the terms and conditions established in the following administrative regulations:

(a) 907 KAR 1.005[907 KAR 1.005]-Nonduplication-of-payment;

(b) 907 KAR 1.571[907 KAR 1.571]-Conditions of Medicaid provider participation, withholding overpayments, administrative appeal process, and sanctions; and

(c) 907 KAR 1.672[907 KAR 1.672]-Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating provider shall comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164.

(4) A participating provider shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of the decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department for:

1. Being:
   a. Incidental;
   b. Integral; or
   c. Mutually exclusive;

2. Incorrect billing procedures, including incorrect bundling of procedures;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

Section 3. Record Maintenance. (1) A provider shall maintain comprehensive legible medical records which substantiate the services billed.

(2) A medical record shall be signed by the provider and dated to reflect the date of service.

(3) An X-ray shall be of diagnostic quality and shall include the:

(a) Recipient's name;

(b) Service date, and

(c) Provider's name.

(4) A treatment regimen shall be documented to include:

(a) Diagnosis;

(b) Treatment plan;

(c) Treatment and follow-up; and

(d) Medical necessity.

(5) Medical records, including x-rays, shall be maintained in accordance with 907 KAR 1.672, Section 4(3) and (4).

Section 4. General Coverage Requirements. (1) A covered service shall be:

(a) Medically necessary;

(b) Except as provided in subsection (2) of this section, furnished to a recipient through direct practitioner contact; and

(c) Unless a recipient's provider demonstrates that dental services in excess of the following service limitations are medically necessary, limited to:

1. Two (2) prophylaxis per twelve (12) month period for a recipient under age twenty-one (21);

2. One (1) dental visit per month per provider for a recipient age twenty-one (21) and over;

3. One (1) prophylaxis per twelve (12) month period for a recipient age twenty-one (21) and over.

(2) A covered service provided by an individual who meets the definition of other licensed medical professional shall be covered if:

(a) Individual is employed by the supervising oral surgeon, dentist, or dental group;

(b) Individual is licensed in the state of practice; and

(c) Supervising provider has direct practitioner contact with the recipient, except for a service provided by a dental hygienist if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313.310.

(3)(a) A medical resident may provide services if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174.

(b) A dental resident, student, or dental hygiene student may provide services under the direction of a program participating provider in or affiliated with an American Dental Association accredited institution.

(4) Coverage shall be limited to services identified in 907 KAR 1:626, Section 3, in the following CDT categories:

(a) Diagnostic;
Section 5. Diagnostic Service Coverage Limitations. (1)(a) Except as provided in paragraph (b) of this subsection, coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider.

(b) The department shall cover a second comprehensive oral evaluation if the evaluation is provided in conjunction with a prophylaxis to an individual under twenty-one (21) years of age.

(c) A comprehensive oral evaluation shall not be covered in conjunction with the following:
1. A limited oral evaluation for trauma related injuries;
2. Space maintainers;
3. Root canal therapy;
4. Denture relining;
5. Transitional appliances;
6. A prosthetic service;
7. Temporomandibular joint therapy;
8. An orthodontic service;
9. Palliative treatment; or
10. A hospital call.

(2)(a) Coverage for a limited oral evaluation shall:
1. Be limited to a trauma related injury or acute infection;
2. Be limited to one (1) per date of service, per recipient, per provider; and
3. Require a prepayment review.

(b) A limited oral evaluation shall not be covered in conjunction with another service except for:
1. A periapical x-ray;
2. Bitewing x-rays;
3. A panoramic x-ray;
4. Resin, anterior;
5. A simple or surgical extraction;
6. Surgical removal of a residual tooth root;
7. Removal of a foreign body;
8. Suture of a recent small wound;
9. Intravenous sedation; or
10. Incision and drainage of infection.

(3)(a) Except as provided in paragraph (b) of this subsection, the following limitations shall apply to coverage of a radiographic service:
1. Bitewing x-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider;
2. Periapical x-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider;
3. An intraoral complete x-ray series shall be limited to one (1) per twelve (12) month period, per recipient, per provider;
4. Periapical and bitewing x-rays shall not be covered in the same twelve (12) month period as an intraoral complete x-ray series per recipient, per provider;
5. A panoramic film shall:
   a. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and
   b. Require prior authorization in accordance with Section 15(2) and (3) of this administrative regulation for a recipient under age six (6);
6. A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider; or
7. Cephalometric and panoramic x-rays shall not be covered in conjunction with a comprehensive orthodontic consultation.

(b) The limits established in paragraph (a) of this subsection shall not apply to:
1. An x-ray necessary for a root canal or oral surgical procedure; or
2. An x-ray that exceeds the established service limitations and is determined by the department to be medically necessary.

Section 6. Preventive Service Coverage Limitations. (1)(a) Coverage of a prophylaxis shall be limited to:
1. For an individual twenty-one (21) years of age and over, one (1) per twelve (12) month period, per recipient; and
2. For an individual under twenty-one (21) years of age, two (2) per twelve (12) month period, per recipient.

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling or root planing.

(2)(a) Coverage of a sealant shall be limited to:
1. A recipient age five (5) through twenty (20) years;
2. Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and
3. An occlusal surface that is noncarious.

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same date of service.

(3)(a) Coverage of a space maintainer shall:
1. Be limited to a recipient under age twenty-one (21); and
2. Require the following:
   a. Fabrication;
   b. Insertion;
   c. Follow-up visits;
   d. Adjustments; and
   e. Documentation in the recipient's medical record to:
      1. Substantiate the use for maintenance of existing intertooth space; and
      2. Support the diagnosis and a plan of treatment that includes follow-up visits.

(b) The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(c) Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination thereof shall not exceed two (2) per twelve (12) month period, per recipient.

Section 7. Restorative Service Coverage Limitations. (1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

(2) Coverage of a prefabricated crown shall be:
(a) Limited to a recipient under age twenty-one (21); and
(b) Inclusive of any procedure performed for restoration of the same tooth.

(3) Coverage of a pin retention procedure shall be limited to:
(a) A permanent molar;
(b) One (1) per tooth, per date of service, per recipient; and
(c) Two (2) per permanent molar, per recipient.

(4) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:
(a) An amalgam, three (3) or more surfaces;
(b) A permanent prefabricated resin crown; or
(c) A prefabricated stainless steel crown.

Section 8. Endodontic Service Coverage Limitations. (1) Coverage of the following endodontic procedures shall be limited to a recipient under age twenty-one (21):
(a) A pulp cap direct;
(b) Therapeutic pulpotomy; or
(c) Root canal therapy.

(2) A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.

(3)(a) Coverage of root canal therapy shall require:
1. Treatment of the entire tooth;
2. Completion of the therapy; and
3. An x-ray taken before and after completion of the therapy.

(b) The following root canal therapy shall not be covered:
1. The Sargenti method of root canal treatment; or
2. A root canal on one (1) root of a molar.

Section 9. Periodontic Service Coverage Limitations. (1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:
(a) A recipient with gingival overgrowth due to a:
1. Congenital condition;
2. Hereditary condition; or
3. Drug-induced condition; and
   (b) One (1) per tooth or per quadrant, per provider, per recipient per twelve (12) month period.

2. Coverage of a quadrant procedure shall require a minimum of a three (3) tooth area within the same quadrant.

2. Coverage of a per-tooth procedure shall be limited to no more than two (2) teeth within the same quadrant.

3. Coverage for a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:
   (a) Pocket-depth measurements;
   (b) A history of nonsurgical services; and
   (c) Prognosis.

3. Coverage for a periodontal scaling and root planing procedure shall:
   (a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;
   (b) Require prior authorization in accordance with Section 15(2) and (4) of this administrative regulation; and
   (c) Require documentation to include:
      1. A periapical film or bitewing x-ray; and
      2. Periodontal charting of preoperative pocket depths.

4. Coverage of a quadrant procedure shall require a minimum of a three (3) tooth area within the same quadrant.

5. Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.

6. (a) A full mouth debridement shall only be covered for a pregnant woman.

6. Only one (1) full mouth debridement per pregnancy shall be covered.

Section 10. Prosthodontic Service Coverage Limitations. (1) A removable prosthodontic or denture repair shall be limited to a recipient under age twenty-one (21).

(2) A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:
   (a) Repair resin denture base; or
   (b) Repair cast framework.

(3) Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:
   (a) Replacement of a broken tooth on a denture;
   (b) Laboratory relining of:
      1. Maxillary dentures; or
      2. Mandibular dentures,
   (c) An interim maxillary partial denture; or
   (d) An interim mandibular partial denture.

(4) An interim maxillary or mandibular partial denture shall be limited to use:
   (a) During a transition period from a primary dentition to a permanent dentition;
   (b) For space maintenance or space management; or
   (c) As an interceptive or preventive orthodontics.

Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board certified prosthodontist:
(1) A nasal prosthesis;
(2) An auricular prosthesis;
(3) A facial prosthesis;
(4) A mandibular resection prosthesis;
(5) A pediatric speech aid;
(6) An adult speech aid;
(7) A palatal augmentation prosthesis;
(8) A palatal lift prosthesis;
(9) An oral surgical splint; or
(10) An unspecified maxillofacial prosthesis.

Section 12. Oral and Maxillofacial Service Coverage Limitations. (1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:
   (a) Be limited to exposure of the tooth for orthodontic treatment; and
   (b) Require prepayment review.

(4) Coverage of alveoplasty shall:
   (a) Be limited to one (1) per quadrant, per lifetime, per recipient; and
   (b) Require a minimum of a three (3) tooth area within the same quadrant.

(5) An occlusal orthotic device shall:
   (a) Be covered for temporomandibular joint therapy;
   (b) Require prior authorization in accordance with Section 15(2) and (5) of this administrative regulation;
   (c) Be limited to a recipient under age twenty-one (21); and
   (d) Be limited to one (1) per lifetime, per recipient.

(6) Frenulectomy shall be limited to one (1) per date of service.

(7) Coverage shall be limited to one (1) per lifetime, per recipient, for removal of the following:
   (a) Tonsil palatinus (maxillary arch);
   (b) Tonsil mandibularis (lower left quadrant); or
   (c) Tonsil mandibularis (lower right quadrant).

(8) Except as specified in subsection (9)(4) of this section, a service provided by an oral surgeon shall be covered in accordance with 907 KAR 3:0055, Physicians' Services.

(9)(4) If performed by an oral surgeon, coverage of a service identified in CDT shall be limited to:
   (a) Extractions;
   (b) Impactions; and
   (c) Surgical access of an unerupted tooth.

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:
   (a) Be limited to a recipient under age twenty-one (21); and
   (b) Require prior authorization.

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) The department shall only cover new orthodontic brackets or appliances.

(5) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(6) In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:
   (a) Require a referral by a dentist; and
   (b) Be limited to:
      1. The correction of a disabling malocclusion; or
      2. Transitional or full permanent dentition unless for treatment of a cleft palate or severe facial anomaly.

(7) A disabling malocclusion shall exist if a patient:
   (a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;
   (b) Has a true anterior open bite that does not include:
      1. One (1) or two (2) teeth slightly out of occlusion; or
      2. Where the incisors have not fully erupted;
   (c) Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal);
   (d) Has an anterior crossbite that involves:
      1. More than two (2) teeth in crossbite;
      2. Obvious gingival stripping; or
      3. Recession related to the crossbite;
   (e) Demonstrates handicapping posterior transverse discrepancies which:
      1. May include several teeth, one (1) of which shall be a molar; and
      2. Is handicapping in a function fashion as follows:
         a. Functional shift;
         b. Facial asymmetry;
         c. Complete buccal or lingual crossbite; or
         d. Speech concern;
   (f) Has a significant posterior open bite that does not involve:
      1. Partially erupted teeth; or
2. One (1) or two (2) teeth slightly out of occlusion;
   (g) Except for third molars, has impacted teeth that will not erupt into the arches without orthodontic or surgical intervention;
   (h) Has extreme overjet in excess of eight (8) to nine (9) millimeters and one (1) of the skeletal conditions specified in paragraphs (a) through (g) of this subsection;
   (i) Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures, and does not include simple loss of teeth with no other effects;
   (j) Has a congenital or developmental disorder giving rise to a handicapping malocclusion;
   (k) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach or;
   (l) Has developmental anodontia in which several congenitally missing teeth result in a handicapping malocclusion or arch deformation.
(b) Coverage of comprehensive orthodontic treatment shall not be inclusive of orthognathic surgery.
(c) If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:
   (A) A referral form, if applicable; and
   (B) A letter detailing:
       1. Treatment provided, including dates of service;
       2. Current treatment status of the patient; and
       3. Charges for treatment provided.
(d) Remaining portions of comprehensive orthodontic treatment may be authorized for provided coverage upon submission of the prior authorization requirements specified in Section 15(2) and (7) of this administrative regulation if treatment:
   (1) Is transferred to another provider; or
   (2) Began prior to Medicaid eligibility.

(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.
(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except radiographs.
(2) A coverage of a hospital call shall be limited to one (1) per date of service, per recipient, per provider.
(b) A hospital call shall not be covered in conjunction with:
   1. Limited oral evaluation;
   2. Comprehensive oral evaluation; or
(c) A coverage of intravenous sedation shall be limited to a recipient under age twenty-one (21).
   (b) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

Section 15. Prior Authorization. (1) Prior authorization shall be required for the following:
(a) A panoramic film for a recipient under age six (6);
(b) Periodontal scaling and root planing;
(c) An occlusal orthotic device;
(d) A preorthodontic treatment visit;
(e) Removable appliance therapy;
(f) Fixed appliance therapy, or
(g) A comprehensive orthodontic service.
(2) A provider shall request prior authorization by submitting the following information to the department:
(a) A MAP 9, Prior Authorization for Health Services;
(b) Additional forms or information as specified in subsections (3) through (7) of this section; and
(c) Additional information required to establish medical necessity if requested by the department.
(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.
(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.
(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.
(6) A request for prior authorization of removable and fixed appliance therapy shall include:
(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;
(b) Panoramic film or intraoral complete series; and
(c) Dental models.
(7) A request for prior authorization for comprehensive orthodontic services shall include:
(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;
(b) A MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement;
(c) Cephalometric x-rays with tracing;
(d) A panoramic x-ray;
(e) Intraoral and extraoral facial front and profile pictures;
(f) Occluded and trimmed dental models;
(g) An oral surgeon's pretreatment work up notes if orthognathic surgery is required.
(h) After six (6) monthly visits are completed, but not later than twelve (12) months after the billing date of service:
   1. A MAP 559, Six (6) Month Orthodontic Progress Report, and
   2. An additional MAP 9, Prior Authorization for Health Services; and
(i) Within three (3) months following completion of the comprehensive orthodontic treatment:
   1. Beginning and final records; and
   2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.
(8) Upon receipt and review of the materials required in subsection (7) a through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.
(9) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.
(10) Prior authorization shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the provider.
(11) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

Section 16. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:503.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.
(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1.671.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) *MAP 9, Prior Authorization for Health Services*, December 1995 edition;
(b) *MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement*, December 1995 edition;
(c) *MAP 306, Temporomandibular Joint (TMJ) Assessment Form*, December 1995 edition;
(d) *MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form*, March 2001 edition;
(e) *MAP 559, Six (6) Month Orthodontic Progress Report*, December 1995 edition; and
(f) *MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission*, December 1995 edition.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2008, 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 September 2, 2008. 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: Linda Dailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to dental services provided to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to dental services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050 and other authorizing statutes by establishing provisions related to dental services.

(d) How this administrative regulation currently asserts or will assert in the effective administration of the statute: This administrative regulation assists in the effective administration of KRS 194A.050 and other authorizing statutes by establishing provisions related to dental 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 allows reimbursement for additional dental procedures for Medicaid recipients in both age categories, under and over twenty-one (21) years of age. The following additional dental procedures that will be covered are limited to one (1) per lifetime, per recipient: removal of totox palatines (maxillary arch), removal of tubus mandibularis (lower left quadrant), and removal of tubus mandibularis (lower right quadrant).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable dental providers to be reimbursed for the removal of tubus palatines (maxillary arch), tubus mandibularis (lower left quadrant), and tubus mandibularis (lower right quadrant). A few dentists are performing these procedures free-of-charge because they are necessary and currently Medicaid does not allow reimbursement for these services; however, other dental providers are not performing these procedures due to the lack of reimbursement by Medicaid.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by enabling dental providers to be reimbursed for the removal of tubus palatines (maxillary arch), tubus mandibularis (lower left quadrant), and tubus mandibularis (lower right quadrant).

(d) How the amendment will assist in the effective administration of the statute: This amendment will assist in the effective administration of the authorizing statutes by enabling dental providers to be reimbursed for the removal of tubus palatines (maxillary arch), tubus mandibularis (lower left quadrant), and tubus mandibularis (lower right quadrant).

(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 dental service recipients and Medicaid dental providers.

(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. Dental providers, approved to provide Medicaid services, will be allowed to receive reimbursement for the added procedures and will not have to take any 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 imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment, dental providers will be allowed to be reimbursed for additional dental procedures and DMS anticipates that recipients will have more access to these procedures.

(5) Provide an estimate of how much it will cost to implement this administrative regulation. The cost will exceed $36,000 annually because during the past year the cost for the procedures was approximately $36,000 while the coverage was limited to fewer providers.

(6) On a continuing basis: DMS anticipates the cost will exceed $38,000 based on prior service utilization while providers were more limited.

(7) 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.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary as a result of the amendment.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies equally to all dental providers.

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 the Department for Medicaid Services but is not expected to affect local government units, parts or divisions.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 194A.030(2), 194A.050(1), 205.520(3), and 42 U.S.C. 1396a-d.

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 no revenue will be generated by the amendment.
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(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 no revenue will be generated by the amendment.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the cost will exceed $38,000 annually because during the past year the cost for the procedures was approximately $38,000 while the coverage was limited to fewer providers.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the cost will exceed $38,000 based on prior service utilization while providers were more limited.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations
(Amendment)

907 KAR 1:626. Reimbursement of dental services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.100, 447.200-205, 42 U.S.C. 1396a-d

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, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the method for determining the amount payable by the cabinet for a dental service.

Section 1. Definitions. (1) "Comprehensive orthodontic procedure" means a medically necessary dental service for a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a procedure that is performed:

(a) For removing thick or dense deposits on the teeth which is required if tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, or gum disease; and

(b) Separately from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

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

(5) "Disabling malocclusion" means that a patient has a condition that meets the criteria established in 907 KAR 1:626, Section 13(7).

(6) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional practitioner resources, or

(b) Is clinically integral to the performance of the primary procedure.

(7) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(8) "Manually placed" or "MPI" means that a procedure is placed according to complexity.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130.

(10) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CDT codes; or

(d) Are described in CSR as inappropriate coding of procedure combinations.

(11) "Prepayment review" or "PPR" means a departmental review of a claim to determine if the requirements established in 907 KAR 1:626 have been met prior to authorizing payment.

(12) "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(13) "Provider" is defined in KRS 205.8451(7)

(14) "Recipient" is defined in KRS 205.8451(6).

(15) "Timely filing" means receipt of a claim by Medicaid.

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established, or

(c) Within six (6) months of the Medicaid adjudication date if the service was billed to Medicare.

(16) "Usual and customary charge" means the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be the lesser of the:

(a) Dentist’s usual and customary charge;

(b) Reimbursement limits specified in Sections 3 and 4 of this administrative regulation;

(c) Manually-priced amount; or

(d) Prior authorized fee

(2) If a rate has not been established for a covered dental service, the department shall set an upper limit for the procedure by:

(a) Averaging the reimbursement rates assigned to the service by three (3) other payer or provider sources; and

(b) Comparing the calculated average obtained from these three (3) rates to rates of similar procedures paid by the department.

(3) If cost sharing is required, the cost sharing shall be in accordance with 907 KAR 1:604.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:608.

(5) A service which is not billed within timely filing requirements shall not be reimbursed.

(6) If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

Section 3. Reimbursement Rates for Dental Services. (1) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient under twenty-one (21) years of age:

<table>
<thead>
<tr>
<th>Kentucky Medicaid Dental Services</th>
<th>Upper Limit</th>
<th>Authorization Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Diagnostic Procedures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited oral evaluation (trauma-related injuries or acute infection only)</td>
<td>$33</td>
<td>PPR required</td>
</tr>
<tr>
<td>Comprehensive oral evaluation</td>
<td>$26</td>
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<tr>
<td>Intraoral complete series</td>
<td>$60 70</td>
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<tr>
<td>Intraoral penpalatal, first film</td>
<td>$10 40</td>
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<tr>
<td>Intraoral periapical, each additional film</td>
<td>$7.80</td>
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<tr>
<td>Bitewing, single film</td>
<td>$9 10</td>
<td></td>
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<tr>
<td>Bitewing, 2 films</td>
<td>$10 20</td>
<td></td>
</tr>
<tr>
<td>Bitewing, 4 films</td>
<td>$29 90</td>
<td></td>
</tr>
<tr>
<td>Panoramic film</td>
<td>$39</td>
<td>PA required</td>
</tr>
</tbody>
</table>

- 442 -
<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cephalometric film for ages 5 and under</td>
<td>$61.10</td>
</tr>
<tr>
<td>Preventive Procedures</td>
<td></td>
</tr>
<tr>
<td>Prophylaxis</td>
<td>$48.10</td>
</tr>
<tr>
<td>Sealant per tooth (ages 5-20)</td>
<td>$19.50</td>
</tr>
<tr>
<td>Space maintainer, fixed unilateral</td>
<td>$135.20</td>
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<tr>
<td>Space maintainer, fixed bilateral</td>
<td>$262.60</td>
</tr>
<tr>
<td>Space maintainer, removable unilateral</td>
<td>$134.00</td>
</tr>
<tr>
<td>Space maintainer, removable bilateral</td>
<td>$202.00</td>
</tr>
<tr>
<td>Restorative Procedures</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 1 surface</td>
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<tr>
<td>Amalgam, 2 surfaces</td>
<td>$65.60</td>
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<tr>
<td>Amalgam, 3 surfaces</td>
<td>$76.70</td>
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<tr>
<td>Amalgam, 4 or more surfaces</td>
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<tr>
<td>Resin, 1 surface, anterior</td>
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</tr>
<tr>
<td>Resin, 2 surfaces, anterior</td>
<td>$71.50</td>
</tr>
<tr>
<td>Resin, 3 surfaces, anterior</td>
<td>$86.80</td>
</tr>
<tr>
<td>Resin, 4 or more surfaces, anterior</td>
<td>$101.40</td>
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<tr>
<td>Resin, 1 surface, posterior</td>
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</tr>
<tr>
<td>Resin, 2 surfaces, posterior</td>
<td>$71.50</td>
</tr>
<tr>
<td>Resin, 3 surfaces, posterior</td>
<td>$86.80</td>
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<tr>
<td>Resin, 4 or more surfaces, posterior</td>
<td>$101.40</td>
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<tr>
<td>Prefab stainless steel crown primary</td>
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<tr>
<td>Prefab stainless steel crown permanent</td>
<td>$133.90</td>
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<tr>
<td>Prefab resin crown</td>
<td>$113.10</td>
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<tr>
<td>Pin retention, per tooth, in addition to restoration</td>
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</tr>
<tr>
<td>Endodontic Procedures</td>
<td></td>
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<tr>
<td>Pulp cap direct</td>
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<tr>
<td>Therapeutic pulpotomy</td>
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<td>Root canal therapy anterior</td>
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<td>Root canal therapy bicuspid</td>
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<td>Root canal therapy molar</td>
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<tr>
<td>Apicoectomy anterior</td>
<td>$201.50</td>
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<tr>
<td>Apicoectomy, bicuspid first root</td>
<td>$201.50</td>
</tr>
<tr>
<td>Apicoectomy, molar first root</td>
<td>$201.50</td>
</tr>
<tr>
<td>Replace missing or broken tooth on denture</td>
<td>$40.30</td>
</tr>
<tr>
<td>Apicoectomy, per tooth each additional root</td>
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</tr>
<tr>
<td>Periodontic Procedures</td>
<td></td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per quadrant</td>
<td>$336.70</td>
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<tr>
<td>Gingivectomy, gingivoplasty per tooth</td>
<td>$135.20</td>
</tr>
<tr>
<td>Periodontal scaling and root planning per quadrant</td>
<td>$101.40</td>
</tr>
<tr>
<td>Full mouth debridement</td>
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<tr>
<td>Removable Prosthodontic Procedures</td>
<td></td>
</tr>
<tr>
<td>Repair resin denture base</td>
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<tr>
<td>Repair cast framework</td>
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<tr>
<td>Replace broken teeth, per tooth on a denture</td>
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<tr>
<td>Reline complete maxillary denture</td>
<td>$128.70</td>
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<tr>
<td>Reline complete mandibular denture</td>
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</tr>
<tr>
<td>Intern partial upper</td>
<td>$319.80</td>
</tr>
<tr>
<td>Intern partial lower</td>
<td>$336.70</td>
</tr>
<tr>
<td>Maxillofacial Prosthetic Procedures</td>
<td>$2,036</td>
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<tr>
<td>Auricular prosthesis</td>
<td>$1,781</td>
</tr>
<tr>
<td>Facial prosthesis</td>
<td>$3,408</td>
</tr>
<tr>
<td>Obturator (temporary)</td>
<td>$1,121.90</td>
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<td>Obturator (permanent)</td>
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<tr>
<td>Mandibular resection prosthesis</td>
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<tr>
<td>Speech aid-pediatric (13 and under)</td>
<td>$2,036</td>
</tr>
<tr>
<td>Speech aid (14 - 20)</td>
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</tr>
<tr>
<td>Palatal augmentation prosthesis</td>
<td>$1,550</td>
</tr>
<tr>
<td>Palatal lift prosthesis</td>
<td>$1,836</td>
</tr>
<tr>
<td>Oral surgical splint</td>
<td>$896</td>
</tr>
<tr>
<td>Unspecified maxillofacial prosthetic procedure</td>
<td>MP</td>
</tr>
<tr>
<td>Oral and Maxillofacial Surgery Procedures</td>
<td></td>
</tr>
<tr>
<td>Extraction, deciduous tooth</td>
<td>$49.40</td>
</tr>
<tr>
<td>Extraction, erupted tooth or exposed root</td>
<td>$49.40</td>
</tr>
<tr>
<td>Surgical removal of erupted tooth</td>
<td>$93.60</td>
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<tr>
<td>Removal of impacted tooth (soft issue)</td>
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<td>Removal of impacted tooth (partially bony)</td>
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<td>Removal of impacted tooth (comp. bony or unusual)</td>
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<tr>
<td>Removal of torus palatinus (maxillary arch)</td>
<td>$302.47</td>
</tr>
<tr>
<td>Removal of torus mandibulars (lower left quadrant)</td>
<td>$209.28</td>
</tr>
<tr>
<td>Removal of torus mandibulars (lower right quadrant)</td>
<td>$209.28</td>
</tr>
<tr>
<td>Surgical access of an unerupted tooth</td>
<td></td>
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<tr>
<td>Surgical repair - residual tooth roots</td>
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<tr>
<td>Omental fistula closure</td>
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</tr>
<tr>
<td>Alveoplasty in conjunction with extraction per quadrant</td>
<td>$101.40</td>
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<tr>
<td>Alveoplasty not in conjunction with extraction per quadrant</td>
<td>$101.40</td>
</tr>
<tr>
<td>Extraction of bony Flavor</td>
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<tr>
<td>Incision and drainage of abscess (extraoral)</td>
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<td>Removal of foreign body</td>
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<td>Temporomandibular splint therapy</td>
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</tr>
<tr>
<td>Suture of recent small wound</td>
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<tr>
<td>Frenulectomy</td>
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<tr>
<td>Orthodontic Procedures</td>
<td></td>
</tr>
<tr>
<td>Removable appliance therapy</td>
<td>$362</td>
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<tr>
<td>Fixed appliance therapy</td>
<td>$259</td>
</tr>
<tr>
<td>Prosthodontic exam and treatment plan</td>
<td>PA Fee</td>
</tr>
<tr>
<td>Orthodontic treatment</td>
<td>PA Fee</td>
</tr>
<tr>
<td>Unspecified orthodontic procedure-final 1/3</td>
<td>PA Fee</td>
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<td>Adjuvative General Services</td>
<td></td>
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<tr>
<td>Palliative treatment of dental pain</td>
<td>$27.30</td>
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<tr>
<td>Intravenous sedation</td>
<td>$158.60</td>
</tr>
<tr>
<td>Hospita call</td>
<td>$67.60</td>
</tr>
</tbody>
</table>

(2) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient twenty-one (21) years of age and older:

<table>
<thead>
<tr>
<th>Kentucky Medicaid Dental Services</th>
<th>Upper Limit</th>
<th>Authorization Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Upper Limit</td>
<td>Authorization Requirement</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th><strong>Diagnostic Procedures</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited oral evaluation (trauma related injuries only)</td>
<td>$33  PPR required</td>
</tr>
<tr>
<td>Comprehensive oral evaluation</td>
<td>$28</td>
</tr>
<tr>
<td>Intraoral complete series</td>
<td>$49</td>
</tr>
<tr>
<td>Intraoral panoramic, first film</td>
<td>$6</td>
</tr>
<tr>
<td>Intraoral panoramic, each additional film</td>
<td>$6</td>
</tr>
<tr>
<td>Bitewing, single film</td>
<td>$7</td>
</tr>
<tr>
<td>Bitewing, 2 films</td>
<td>$14</td>
</tr>
<tr>
<td>Bitewing, 4 films</td>
<td>$23</td>
</tr>
<tr>
<td>Panoramic film</td>
<td>$39</td>
</tr>
<tr>
<td>Cephalometric film</td>
<td>$47</td>
</tr>
<tr>
<td>Preventative Procedures</td>
<td></td>
</tr>
<tr>
<td>Prophylaxis</td>
<td>$37</td>
</tr>
<tr>
<td><strong>Restorative Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>Amalgam, 1 surface</td>
<td>$38</td>
</tr>
<tr>
<td>Amalgam, 2 surfaces</td>
<td>$50</td>
</tr>
<tr>
<td>Amalgam, 3 surfaces</td>
<td>$59</td>
</tr>
<tr>
<td>Amalgam, 4 or more surfaces</td>
<td>$72</td>
</tr>
<tr>
<td>Resin, 1 surface, anterior</td>
<td>$44</td>
</tr>
<tr>
<td>Resin, 2 surfaces, anterior</td>
<td>$55</td>
</tr>
<tr>
<td>Resin, 3 surfaces, anterior</td>
<td>$66</td>
</tr>
<tr>
<td>Resin, 4 or more surfaces, anterior</td>
<td>$78</td>
</tr>
<tr>
<td>Resin, 1 surface, posterior</td>
<td>$44</td>
</tr>
<tr>
<td>Resin, 2 surfaces, posterior</td>
<td>$55</td>
</tr>
<tr>
<td>Resin, 3 surfaces, posterior</td>
<td>$66</td>
</tr>
<tr>
<td>Resin, 4 or more surfaces, posterior</td>
<td>$78</td>
</tr>
<tr>
<td>Pulp retention, per tooth, in addition to restoration</td>
<td>$13</td>
</tr>
<tr>
<td><strong>Endodontic Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>Apicoectomy anterior</td>
<td>$155</td>
</tr>
<tr>
<td>Apicoectomy, biocusp first root</td>
<td>$155</td>
</tr>
<tr>
<td>Apicoectomy, molar first root</td>
<td>$155</td>
</tr>
<tr>
<td>Apicoectomy, per tooth each additional root</td>
<td>$197</td>
</tr>
<tr>
<td><strong>Periodontic Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>Full mouth debridement</td>
<td>$68.50 Pregnant women only</td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per quadrant</td>
<td>$269 PPR required</td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per tooth</td>
<td>$104 PPR required</td>
</tr>
<tr>
<td>Periodontal scaling and root planing per quadrant</td>
<td>$78 PA required</td>
</tr>
<tr>
<td><strong>Maxillofacial Prosthetic Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>Nasal prosthesis</td>
<td>$2,036</td>
</tr>
<tr>
<td>Auricular prosthesis</td>
<td>$1,881</td>
</tr>
<tr>
<td>Facial prosthesis</td>
<td>$3,408</td>
</tr>
<tr>
<td>Obturator (temporary)</td>
<td>$693</td>
</tr>
<tr>
<td>Obturator (permanent)</td>
<td>$1,982</td>
</tr>
<tr>
<td>Mandibular resection prosthesis</td>
<td>$1,660</td>
</tr>
<tr>
<td>Spee and Adult</td>
<td>$2,036</td>
</tr>
<tr>
<td>Palatal augmentation prosthesis</td>
<td>$1,550</td>
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<tr>
<td>Palatal lift prosthesis</td>
<td>$1,836</td>
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<tr>
<td>Oral surgical splint</td>
<td>$896</td>
</tr>
<tr>
<td>Unspecified maxillofacial prosthetic procedure</td>
<td>MP PPR required</td>
</tr>
<tr>
<td><strong>Oral and Maxillofacial Surgery Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>Extraction, deciduous tooth</td>
<td>$38</td>
</tr>
<tr>
<td>Extraction, erupted tooth of exposed root</td>
<td>$38</td>
</tr>
<tr>
<td>Surgical removal of erupted tooth</td>
<td>$72</td>
</tr>
<tr>
<td>Removal of impacted tooth (soft tissue)</td>
<td>$98</td>
</tr>
<tr>
<td>Removal of impacted tooth (partially bony)</td>
<td>$138</td>
</tr>
<tr>
<td>Removal of impacted tooth (completely bony)</td>
<td>$166</td>
</tr>
<tr>
<td>Removal of impacted tooth (comp bony or unusual)</td>
<td>$171</td>
</tr>
<tr>
<td>Removal of tonsis palatins (maxillary arch)</td>
<td>$302.47</td>
</tr>
<tr>
<td>Removal of tonsis mandibulans (lower left quadrant)</td>
<td>$209.28</td>
</tr>
<tr>
<td>Removal of tonsis mandibulans (lower right quadrant)</td>
<td>$209.28</td>
</tr>
<tr>
<td>Surgical access of an unerupted tooth</td>
<td>MP PPR required</td>
</tr>
<tr>
<td>Surgical removal of residual tooth roots</td>
<td>$93</td>
</tr>
<tr>
<td>Orofacial fistula closure</td>
<td>$104</td>
</tr>
<tr>
<td>Alveoplasty in conjunction with extraction per quadrant</td>
<td>$78</td>
</tr>
<tr>
<td>Alveoplasty not in conjunction with extraction per quadrant</td>
<td>$78</td>
</tr>
<tr>
<td>Excision of benign lesion</td>
<td>$67</td>
</tr>
<tr>
<td>Incision and drainage of abscess (intraoral)</td>
<td>$52</td>
</tr>
<tr>
<td>Incision and drainage of abscess (extraoral)</td>
<td>$52</td>
</tr>
<tr>
<td>Removal of foreign body</td>
<td>$155</td>
</tr>
<tr>
<td>Suture of recent small wound</td>
<td>$52</td>
</tr>
<tr>
<td>Frenuectomy</td>
<td>$129</td>
</tr>
<tr>
<td>Adjunctive General Services</td>
<td></td>
</tr>
<tr>
<td>Palliative treatment of dental pain</td>
<td>$21</td>
</tr>
<tr>
<td>Hospital call</td>
<td>$52</td>
</tr>
</tbody>
</table>

(3) A comprehensive orthodontic procedure shall be reimbursed as follows:

- (a) Except as specified in paragraph (b) of this subsection, an orthodontic consultation, including examination and development of a treatment plan, $112; 
- (b) The Medicaid reimbursement rate for an orthodontic consultation shall not exceed fifty-six ($56) dollars if:
  1. The provider determines that comprehensive orthodontic treatment services are not needed; 
  2. The provider is unable or unwilling to provide the needed orthodontic treatment services; or 
  3. Prior authorization for comprehensive orthodontic services is not approved by the department or is not requested by the provider;
- (c) A service for an early phase of moderately severe or severe disabling malocclusion:
  1. $1,367 for an orthodontist; or 
  2. $1,234 for a general dentist;
- (d) A service for a moderately severe disabling malocclusion:
  1. $1,825 for an orthodontist; or 
  2. $1,650 for a general dentist;
- (e) A service for a severe disabling malocclusion:
  1. $3,000 total for an orthodontist; or 
  2. $2,674 total for a general dentist.
- (4) Reimbursement for comprehensive orthodontic treatment shall consist of two (2) payments.
  (a) The first payment shall be two-thirds (2/3) of the prior authorized payment amount.
  (b) The second payment shall:
    1. Be one-third (1/3) of the prior authorized payment amount; and
    2. Not be billed until six (6) monthly visits are completed following the billing date.
- (c) The two (2) payments shall be inclusive of all services associated with the comprehensive orthodontic treatment.

Section 4. Oral Surgeons. Except for a service specified in 907 KAR 1:026, Section 12(6), a service provided by an oral surgeon shall be reimbursed in accordance with 907 KAR 3:010.

Section 5. Supplemental Payments. (1) In addition to a payment made pursuant to Sections 2 through 4 of this administrative
regulation, the department shall make a supplemental payment to a dental school faculty dentist who is employed by a state-supported school of dentistry in Kentucky.

(2) The supplemental payment shall be:
(a) In an amount, which, if combined with other payments made in accordance with this administrative regulation, does not exceed the dentist’s charge for a service he has provided:
1. As a dental school faculty; and
2. For which the payment is made directly or indirectly to the dental school;
(b) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of dentistry in Kentucky; and

Section 6. Appeal Rights. An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:871.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 14, 2008, at 10 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Interested persons attending this hearing shall notify this agency in writing by August 14, 2008, 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 September 2, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Daley

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes provisions related to dental services provided to Medicaid recipients.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to dental services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050 and other authorizing statutes by establishing provisions related to dental services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of KRS 194A.050 and other authorizing statutes by establishing provisions related to dental services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment will change this existing administrative regulation: This amendment allows reimbursement for additional dental procedures for Medicaid recipients in both age categories, under and over twenty-one (21) years of age. The additional dental procedures are: removal of torus palatinus (maxillary arch), with an upper limit reimbursement fee of $302.47; removal of torus mandibularis (lower left quadrant), with an upper limit reimbursement fee of $209.28; and removal of torus mandibularis (lower right quadrant), with an upper limit reimbursement fee of $209.28.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable dental providers to be reimbursed for the removal of torus palatinus (maxillary arch), torus mandibularis (lower left quadrant), and torus mandibularis (lower right quadrant). A few dentists are performing these procedures free-of-charge because they are necessary and currently Medicaid does not allow reimbursement for these services; however, other dental providers are not performing these procedures due to the lack of reimbursement by Medicaid.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by allowing dental providers to be reimbursed for the removal of torus palatinus (maxillary arch), torus mandibularis (lower left quadrant), and torus mandibularis (lower right quadrant).
(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 enabling dental providers to be reimbursed for the removal of torus palatinus (maxillary arch), torus mandibularis (lower left quadrant), and torus mandibularis (lower right quadrant).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects Medicaid dental service recipients and Medicaid dental providers.

(4) Provide an analysis of how the entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Dental providers, approved to provide Medicaid services, will be allowed to receive reimbursement for the added procedures and will not have to take any action to comply with the amendment.

(5) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment, dental providers will be allowed to be reimbursed for additional dental procedures and DMS anticipates that recipients will have more access to these procedures.

(6) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) anticipates the cost will exceed $38,000 annually because during the past year the cost for the procedures was approximately $38,000 while the coverage was limited to fewer providers.
(b) On a continuing basis: DMS anticipated the cost will exceed $38,000 based on prior service utilization while providers were more limited.

(c) 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 nor funding is necessary as a result of the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes reimbursement fees for dental providers for additional procedures.

(9) Tieng: Is tieng applied? Tieng is not applied as the amendment applies equally to all providers.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services but is not expected to affect local government units, parts or divisions.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 19A.C.020(2), 19A.C.050(1), 205.520(3), 42 G.F.R. 440.100, 447.200-205, and 42 U.S.C. 1396a-d.

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 no revenue will be generated by the 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? DMS anticipates no revenue will be generated by the amendment.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the cost will exceed $38,000 annually because during the past year the cost for the procedures was approximately $38,000 while the coverage was limited to fewer providers.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the cost will exceed $38,000 based on prior service utilization while providers were more limited.

Note: 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

(AMENDMENT)

922 KAR 1:360. Private child care placement, levels of care, and payment.


STATUTORY AUTHORITY: KRS 194.A.050(4), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.A.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. 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 KRS 199.011.
(2) “Child-caring facility” or “facility” is defined by 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 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 Inter-agency Referral Form;
(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 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 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 client’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-care facility or child-placing agency; and
(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 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-care facility and child-placing agency; and
(b) Every three (3) months thereafter if the child is in a private child care residential placement; or
2. 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-care facility and child-placing agency; and
(b) Maintain a confidential information system for each child served that shall include:
(a) Placement history;
(b) Level of care assessments;
(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; and
(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 intensive 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(1)(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.
(a) The factor shall be determined as follows:
1. Based on the amount of treatment provided at each level of care; and
2. By determining the median of:
(a) Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and
(b) Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;
(b) 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
2. 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 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 child-caring facility shall specify:

1. Indicators used to measure the performance outcomes described in subsection (a)(b) 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 child-caring facility during the contract period shall be included in the performance measurement for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private 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 child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of the payment incentive shall be determined according to the methodology appropriate 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 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) 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 expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;
(b) Increased safety from child abuse or neglect;
(c) Increased number of children moving into and remaining in permanent placement;
(d) Increased number of children and their families cared for in close proximity to their home communities;
(e) Increased number of children reunified with their families;
(f) Increased accountability for success in after care; or
(g) Decreased remand 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 - sixty-one (61) dollars and nineteen (19) cents;
(b) Level II - sixty-one (61) dollars and fifty-two (52) cents;
(c) Level III - $103.71;
(d) Level IV: $151.03;
1. $141.03, effective July 1, 2007 to June 30, 2008; or
2. $147.60, effective July 1, 2008;
(e) Level V - $210.64;
1. $200.64, effective July 1, 2007 to June 30, 2008; or
2. $200.64, effective July 1, 2008;

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. $115.51 per day for a child-caring facility with a treatment license;
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. $102.67 per day for a child-caring facility with a treatment license;
2. Ninety (90) 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 per day; and
(c) Adhere to the child's individual treatment plan

(3a) 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 30th 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 per day; and
3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be forty-three (43) dollars

(2) The 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) dollars;
(b) Levels III - seventy nine (79) dollars and seventy-eight (78) cents.
(c) Level IV - ninety-seven (97) dollars and eleven (11) cents.
(d) Level V - $134.26.

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) The inclusive of child care cost, forty-three (43) dollars per day, inclusive of July 1, 2007, for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;
(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:
1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
2. Clinical services including:
   a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and
   b. 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
   3. Support services that:
      a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
      b. Allow a child to cope with the disability or distress;
      c. Provide access to improving the educational or vocational status of the child; and
      d. Provide essential elements of daily living;
(c) 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 date:

1. For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:
   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) (Achenbach), every six (6) months; and

2. 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) by the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the following completed forms:
   a. 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
   b. The annual basis for a foster care placement, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment;
   c. (d) Provide outcomes data and information as requested by the gatekeeper; and
   (e) 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:
      1. The Council on Accreditation; or
      2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) 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(1)(c) 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(1)(c) 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. (a) Suspend payments until the necessary information has been submitted to the gatekeeper;
   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;

(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;
   b. Level of care is reduced, and the:
      1. The child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date;
      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(1)(c) 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;
   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.
   c. If the child-caring facility, child-placing agency, or cabinet staff agrees with the level of care assigned by the gatekeeper, the child-caring facility, 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, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, 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 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;
      3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review;
      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;
      b. Lower level is assigned by the gatekeeper with a CRP-004, the decreased payment shall be effective thirty (30) days after the request is received by the gatekeeper.
   (4) If the child-caring facility, 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;
   (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 reassessment,
      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. 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
   (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 5/01;
(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 Assessment", 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) "DPF-114, Level of Care Schedule", edition 6/08/7/07;
(j) DPF-896, Private Child Care Client Inter-agency Referral Form", edition 10/04;
(k) "DPF-886, Application for Referral and Needs Assessment", edition 07/07;
(l) DPF-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) "ResS Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990.
(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.

PATRICIA R. WILSON, Commissioner
APPROVED BY AGENCY: June 6, 2008
FILED WITH LRC June 30, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2008, at 9 a.m. in the Health Services Board Room, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by August 14, 2008, 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 September 2, 2008. 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 Persons: Justin Deangar, Regulation Coordinator
(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 procedures 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 505(1), 194A 641, 605.090(1)(c), 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: Effective July 1, 2007, private child care provider reimbursement rates for the care of children in state custody were increased through the biennium budget bill for State Fiscal Year 2006 or HB 380 2006 GA. Funding for the enhanced reimbursement rates will sunset on June 30, 2006. The amendment to this administrative regulation enhances reimbursement rates and ensures compliance with the enacted budget for the upcoming biennium, HB 406 2008 GA.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure continuation of the enhanced private child care provider reimbursement rates and compliance with the enacted budget for the upcoming biennium, HB 406 2008 GA. Funding through the next budget biennium was specifically earmarked during the 2008 legislative session for the continuation of the enhanced private child care provider reimbursement rates for children in state custody. The enhanced private child care provider reimbursement rates promote the health, safety, and welfare of children in state custody through placement stability.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by continuing enhancements to private child care provider reimbursement rates as earmarked in HB 406 2008 GA. The enhanced private child care provider reimbursement rates promote the safety, health, and welfare of children in State custody in said placements.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing private child care provider reimbursement rates congruent with the provisions of HB 406 2008 GA and by promoting placement stability for children in state custody.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 55 private child care providers who hold an agreement with the Cabinet for Health and Family Services for various types of placement. As of May 2008, there were 1,121 children whose private child care providers received the enhanced reimbursement rates for the children’s care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not need to take any action to comply with the amendments to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? 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): Private child care providers will continue to receive the enhanced reimbursement rates for emergency shelter and Level IV and V residential care as originally provided in HB 380 2006 GA and continued by HB 406 2008 GA.

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

(a) Initially: $8,060,514

(b) On a continuing basis: $8,060,514

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E, Medicaid Reimbursement (restricted), 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: HB 406 2008 GA earmarked funds for the continuation of the enhancement to the private child care provider rates through the next budget biennium, State Fiscal Years 2009-2010.

(9) 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 increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Cabinet for Health and Family Services, Department for Community Based Services.

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), 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 not generate any 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? This administrative regulation will not generate any revenue for any subsequent year.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will cost $8,060,514 in its initial year.

(d) How much will it cost to administer this program for subsequent years? Based on current data, the amendment to this administrative regulation will cost $8,060,514 for each subsequent year.

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. 42 U.S.C. 672, OMB Circular A-122.

2. State compliance standards. KHS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1).


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.

RELATES TO: KRS 139.170, KRS 139.518
STATUTORY AUTHORITY: KRS 131.130(1), KRS 139.710
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.170 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes. This administrative regulation establishes requirements for a sales and use tax refund relating to purchases of new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in this state by at least fifteen (15) percent.

Section 1. Definitions. (1) "Energy efficiency project" is defined by KRS 139.518(1).
(2) "Manufacturing" is defined by KRS 139.170(2).
(3) "Plant facility" is defined by KRS 139.170(3).
(4) "Processing production" is defined by KRS 139.170(1)(c)(4).

Section 2. Efficiency Requirements. To calculate the fifteen (15) percent reduction of energy or energy-producing fuels, the decrease in energy consumption shall be based on the total energy consumed within all combined manufacturing and processing production processes at one (1) plant facility.

Section 3. Refund Application Requirements. (1) The applicant shall file a completed Application for Preapproval for Energy Efficiency Machinery or Equipment, Form 51A300, with the Department of Revenue along with energy and energy producing fuel consumption documentation within the timeframe required under KRS 139.518(4).
(2) Requests for the sales and use tax incentive shall be filed within eighteen months from the date the machinery or equipment was placed into service. The following completed documentation demonstrating achievement of the fifteen (15) percent energy efficiency threshold shall be submitted:
   (a) Application for Energy Efficiency Machinery or Equipment-Sales and Use Tax Incentive, Form 51A331;
   (b) Information Sharing Agreement/Agreement for Energy Efficiency Project Incentive, Form 51A350. This agreement shall be completed and signed by the manufacturer, the vendor, and the contractor as applicable; and
   (c) Purchase invoices for the machinery and equipment under consideration for refund.
(3) All applications and other documents required shall be postmarked, electronically submitted or, if delivered by messenger, hand-stamped by the department by the date required to qualify for consideration.
(4) The manufacturer shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided for in KRS 139.721. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.518.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Application for Preapproval for Energy Efficiency Machinery or Equipment", Form 51A300, June 2008;
   (b) "Information Sharing Agreement/Agreement for Energy Efficiency Project Incentive", Form 51A350, June 2008; and
   (c) "Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive", Form 51A331, June 2006.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed new administrative regulation shall be held on August 21, 2008, at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least two (2) (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 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 September 2, 2008. 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: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Dobson, Executive Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does:
      (a) This administrative regulation establishes requirements for sales and use tax refunds relating to energy efficient products.
      (b) The necessity of this administrative regulation: This administrative regulation informs taxpayers of the requirements they must meet to obtain a refund of sales and use tax relating to purchases of new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels in the manufacturing process by at least 15%.
      (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.
      (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This new regulation provides additional guidance on refund requirements for sales and use tax paid on energy efficiency products.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of. This is a new administrative regulation.
      (a) How the amendment will change this existing administrative regulation: 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: Any person or persons involved in requesting a sales and use tax refund relating to purchases of new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in this state by at least 15% will be affected. Various suppliers, subcontractors, general contractors, etc. related to these purchases, as well as the Department of Revenue administering the refund requests, are provided needed guidance.

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(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 changes, if it is an amendment, including:

(a) the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All entities identified in question (3) shall look to the statutory and regulatory provisions for guidance so that refund claims will be filed and reviewed in a timely manner because expenditures will be tracked according to purchase date by appropriate parties with proper tax paid;

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown, but any expense of the refund applicant will be offset by the tax refund itself.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistency and timeliness in compliance with the statutes. All entities involved are told initially what information needs to be captured as purchases occur rather than being forced to retrace transactions for tax documentation at a later date.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation beyond normal legislative implementation expenses.

(b) Once in place: The Department of Revenue will seek to absorb the administrative costs of refund reviews and related taxpayer assistance with existing resources.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue 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: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERRING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer involved in an energy efficiency incentive project.

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 of Revenue and the Office of Sales & Excise Tax.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, 139.710, and 139.516.

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

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

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

(c) How much will it cost to administer this program for the first year: No additional costs beyond routine administration by the department.

(d) How much will it cost to administer this program for subsequent years: No additional costs beyond ongoing tax administration performed with existing resources.

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

Revenues (+/-): The regulation provides guidance on how entities may recover expenses of sales and use tax paid on energy efficiency products which reduce the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in this state by at least 15%.

Expenditures (+/-): Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Infrastructure Authority
(NEW Administrative Regulation)

200 KAR 17:000. Guidelines Kentucky Infrastructure Authority Grants from Unobligated Bond Pool Funds.

RELATES TO: KRS 45.031, 224A.011, 224A.035, 224A.040, 224A.050, 224A.300.

STATUTORY AUTHORITY: KRS 224A.070(1), 224A.113.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the criteria of priority upon which such applications shall be acted upon. KRS 224A.300(4) requires the authority to promulgate administrative regulations requiring an entity receiving funding to provide specific operational information and updates of its system. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions. (1) "Applicant" means a governmental agency that has submitted an application to the authority for a loan or grant from authority funds.

(2) "Application" means an application submitted by an applicant for grant from the authority funds.

(3) "Conditional commitment letter" means a letter delivered to the applicant stating the authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(4) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(5) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system, including a standardized format for an annual budget, a chart of accounts with definitions, and a monthly operating report to system managers established by the authority, which shall be used by a water or wastewater system seeking or using funds of the authority if an alternative accounting system has not been approved by the authority.

(6) "Project" means an infrastructure project related to drinking water or wastewater.

Section 2. Eligible Projects. (1) Funds available to the authority shall be used to fund projects.

(2) Only projects addressing one (1) or more of the following conditions shall be eligible for funding:

(a) Proposed project to be funded shall be water or sewer related;

(b) Projects address provisions of SB 400;

(c) The proposed project will address an emergency situation;

(d) Proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community;

(e) Proposed project shall promote economic development;

(f) Funds for economic development projects shall not be used for creation of industrial sites without committed occupants;

(g) Funds needed to complete funding package;

(h) Funds needed to cover cost overrun for funding package;

(i) All proposed projects shall be subject to availability of funds;
and

(1) Project applications meeting the above guidelines shall be funded in the order received.
(3) Grants shall be limited to $500,000 per project.

Section 3. Applications. Each applicant shall submit one (1)
original application to the authority at the address specified in the
application.
(2) An application shall be submitted on forms prescribed by
the authority and posted on the following Web sites:
http://www.state.ky.us/kia/. Only a completed application, including
all supporting documentation, shall be considered for financial
assistance from the Unobligated Bond Pool.

Section 4. Project Priority. Eligible projects shall be funded in
the order received subject to the availability of funds.

Section 5. Additional Conditions to Project Funding. (1) A water
supply and distribution system seeking funding for a project shall:
(a) Submit with the application current information regarding
the financial, managerial, and technical aspects of its system;
(b) Update the information provided pursuant to paragraph (a)
of this subsection, at least once each year; and
(c) Agree, in writing, to adopt and utilize the Kentucky Uniform
System of Accounting and to charge rates for services based on
the actual cost of that service.
(2) Before funds shall be disbursed to an applicant whose project
has been approved for funding, the applicant shall demonstrate
the authority that the project:
(a) Has been reviewed through the Kentucky State Clearing
house process; and
(b) Is in compliance with other state and federal requirements.

Section 6. Terms of Financial Assistance. (1) An application for
funding shall be:
(a) Subject to financial viability review by authority staff; and
(b) Referred to the board of directors of the authority for final
action.
(2) A project may be funded as approved by the board of direc-
tors of the authority.
(3) Upon approval of an application for funding of a project, the
authority shall issue a conditional commitment letter to the appli-
cant establishing the requirements to be satisfied by the applicant
prior to execution of an assistance agreement, including:
(a) Accounting standards or financial reporting conditions;
(b) Rate covenants;
(c) Other federal or state legal requirements relating to the
project or the applicant;
(d) Engineering or technical requirements;
(e) Receipt of additional funding commitments from other
sources; or
(4) Financial assistance by the authority shall be made avail-
able only upon:
(a) Execution of an assistance agreement; and
(b) Satisfaction by the applicant of the conditions established in
the conditional commitment letter.
(5) A grant amount may be adjusted by up to ten (10) percent
from the principal amount approved by the board of directors with-
out the need for further action by the board if:
(a) Requested by an applicant; and
(b) The staff of the authority finds that:
1. The additional requested amount is needed for the project;
and
2. Adequate funds are available up to $500,000 total per grant.
(6) The Authority shall monitor the assistance agreements and
require that financial reports be made available to the Authority by
the governmental agency at such intervals as necessary.
(7) The Authority shall monitor the cash flows of the project,
and perform all actions that shall be required to assure that the
agreements continuously meet the program standard established by
this administrative regulation.
(8) The Authority shall collect an annual administrative fee of
one-half(1/2) of one (1) percent charged on the principal grant
amount. This fee shall be applied to the servicing costs of the
grants and necessary operating expenses of the program.

Section 7. Incorporation by Reference. (1) "Form KIA-08-01
Unobligated Bond Pool Fund Uniform Grant Application", is incor-
porated by reference.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Infrastructure Au-
thority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky
40602, (502) 573-0260, Monday through Friday, 8 a.m. to 4:30
p.m.

This is to certify that the Kentucky Infrastructure Authority
Board of Directors has reviewed and approved this administrative
regulation, prior to its filing by the Kentucky Infrastructure Authority,
Office of the Governor, with the Legislative Research Commission
as required by KRS 22A.113.

TONY WILDER, Commissioner, Chair
JOHN E. COVINGTON, III, Executive Director
APPROVED BY AGENCY: July 15, 2008
FILED WITH LFC: July 15, 2008 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
August 22, 2008, at 1:30 p.m. at 1024 Capital Center Drive, Suite
340, Frankfort, Kentucky 40601. Individuals interested in being
heard at this hearing shall notify this agency in writing by five
workdays prior to the hearing, of their intent to attend. If no notification
of intent to attend the hearing was received by that date, the
hearing may be cancelled. This hearing will not be held 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 September 2, 2008. Send written notification of in-
tent to hear at the public hearing or written comments on the
proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. John D. Herald, Executive Assistant,
Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite
340, Frankfort, Kentucky 40601, phone (502) 573-0260, fax (502)
573-0157.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Mr. John D. Herald, Executive Assistant

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation will allow the Kentucky Infrastructure Authority to
provide financial assistance to governmental agencies for the con-
struction of infrastructure projects as funds are available to the
Authority.
(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary to provide financial assistance, for
water and sewer projects, to address emergency situations, allevi-
ate serious and immediate threats to the health and welfare of the
citizens of the Commonwealth, promote economic development,
shortfall and other criteria as defined in Section 2 of the
regulation.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: KRS 22A.040 authorizes the Kentucky
Infrastructure Authority to make grants as funds are available and
KRS 22A.070(1) authorizes the Kentucky Infrastructure Authority
to promulgate administrative regulations that shall define with spec-
cificity conditions precedent under which applications for loans or
grants may be made and the order of priority upon which applica-
tions shall be acted upon. KRS 22A.300(4) requires the authority
to promulgate administrative regulations requiring an entity receiv-
ing funding to provide specific operational information and updates
of its system. This administrative regulation establishes procedures
for the application for and provision of financial assistance to go-
vernmental agencies for the construction of infrastructure projects
from funds available to the Kentucky Infrastructure Authority.

(2) How this administrative regulation currently assists in the
effective administration of the statutes. The Kentucky Infrastructure
Authority was created solely to perform essential governmental
functions to serve the public by engaging in a program of assist-
tance to governmental agencies with respect to the construction and acquisition of infrastructure projects. This regulation will allow the Authority to develop a program to continue providing financial assistance to governmental agencies for infrastructure projects. (2) This is an amendment to an existing administrative regulation; provide a brief summary of: This regulation is a new administrative regulation.

(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 administrative regulation will affect all citizens of the Commonwealth and enforcement of this administrative regulation to state and county governments, water and sewer districts who provide water and sewer service to its customers.

(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 impact this regulation will have on the citizens of the Commonwealth is positive in that those agencies will be able to provide clean and safe drinking water and treatment and transportation of wastewater.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

All eligible applicants must apply to the Authority to be eligible to receive financial assistance, meet specific criteria and be approved by the Authority’s Board of Directors.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs incurred by an eligible applicant will be one-half (1/2) of one (1) percent of principal grant amount.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to providing clean and safe drinking water and treatment and transportation of wastewater, providing this financial assistance with allow the eligible applicants to provide a service and maintain affordable rates to benefit its customers.

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

(a) Initially: There will be no additional cost for implementation of this administrative regulation. Funds will be administered and managed with existing staff and through the normal operations of the Kentucky Infrastructure Authority.

(b) On a continuing basis: There will be no additional cost for the continued implementation of this administrative regulation. Funds will be administered and managed with existing staff and through the normal operations of the Kentucky Infrastructure Authority.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Unobligated bond pool funds will be used for implementation 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 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: No increase in fees will result from implementation of this regulation. Since the program will be funded from unobligated funds, no increase in funding will be necessary. This administrative regulation did not establish any fees or directly or indirectly increase any fees.

(9) TIERING: If tiering applied? Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact city and county governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation does not affect any federal statute or federal 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. The effect of this regulation on expenditures and revenues of the city and county governments will be the costs of the infrastructure project and revenues generated from the service provided by the project.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenues generated by the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

(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 revenues generated by the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

(c) How much will it cost to administer this program for the first year? The cost to the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

(d) How much will it cost to administer this program for subsequent years? The cost to the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

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 Medical Licensure (Repealer)

201 KAR 9:011. Repeal of 201 KAR 9:005.

RELATES TO: KRS 311.597(4)
STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), (i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(j) authorizes the board to promulgate a code of conduct governing the practice of medicine and osteopathy based upon generally recognized principles of professional and ethical conduct. This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct, which is adequately addressed by KRS 311.597(4).

Section 1. 201 KAR 9:005, Ethical conduct, is hereby repealed.

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY:

FILED WITH LFC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2008 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notifica-
tion 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 September 2, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7156.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 9.005, Ethical conduct.

(b) The necessity of this administrative regulation: It is necessary to repeal 201 KAR 9.005 because it is already addressed by KRS 311.597(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to repeal 201 KAR 9.005 Ethical conduct.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to repeal 201 KAR 9.005 Ethical conduct.

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

(a) How the amendment will change this existing administrative regulation; This administrative regulation acts specifically to repeal 201 KAR 9.005 Ethical conduct.

(b) The necessity of the amendment to this administrative regulation; This administrative regulation acts specifically to repeal 201 KAR 9.005 Ethical conduct.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to repeal 201 KAR 9.005 Ethical conduct.

(d) How the amendment will assist in the effective administration of the statutes. This administrative regulation acts specifically to repeal 201 KAR 9.005 Ethical conduct.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that acts specifically to repeal 201 KAR 9.005 Ethical conduct which is already addressed by KRS 311.597(4).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required to comply with this repealer regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The repeal of 201 KAR 9.005 will eliminate the same information already addressed by KRS 311.597(4).

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

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

(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(f) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

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? None

3. How does this administrative regulation affect the expenditure and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect? None

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

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? None

6. How much will it cost to administer this program for the first year? None

7. 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.

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(New Administrative Regulation)

201 KAR 27:100. General requirements for amateur mixed martial arts shows.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)

STATUTORY AUTHORITY: KRS 229.071(2), 229.091(1), 229.151(1), 229.171(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) gives the Authority the sole direction, management, control, and jurisdiction over all boxing, sparring, kickboxing, mixed martial arts and wrestling shows or exhibitions to be held or conducted in the Commonwealth. KRS 229.180(1) authorizes the Authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 requires certain participants in exhibitions and shows to be licensed in accordance with eligibility requirements established by administrative regulation. KRS 229.071(2) authorizes the Authority to grant annual licenses to applicants for participation in shows and exhibitions if the Authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.071(3) grants the Authority the power to establish annual license fees for licensed individuals. KRS 229.091(1) states that every licensee is subject to administrative regulations promulgated by the Authority. This administrative regulation establishes license requirements and fees for certain participants in competitive contact sports such as boxing.
and mixed martial arts shows and exhibitions in the Commonwealth

Section 1. (1) The Authority shall license all persons approved to participate as an amateur contestant in a mixed martial arts show. Applicants who have competed in a professional mixed martial arts bout shall not be licensed as an amateur and may not compete against an amateur.

(2) Participants shall apply for a passport through a licensed promoter using the "Application for Amateur MMA Passport", (04/06).

(3) Applications shall be mailed to the Authority by the promoter within twenty-four (24) hours of issuance.

(4) Contestants over the age of thirty-nine (39) shall not be issued a passport until they have complied with Section 26 of this administrative regulation and have been approved by the Authority.

(5) The fee for the amateur passport shall be twenty-five (25) dollars.

(6) Passport renewal shall be ten (10) dollars.

(7) All amateur passports shall expire on December 31 of the year in which they are issued.

Section 2. The schedule for compensation to be paid to the following officials provided by the Authority who are participating in an amateur mixed martial arts show shall be as follows and shall be paid prior to the commencement of the main event:

(1) Judge for mixed martial arts - fifty (50) dollars.

(2) Timekeeper for mixed martial arts - fifty (50) dollars.

(3) Physic for mixed martial arts - $250.

(4) Referee for mixed martial arts - seventy-five (75) dollars.

(5) Bout Assistant for mixed martial arts - seventy-five (75) dollars.

Section 3. If a show is cancelled with less than twenty-four (24) hours notice to the Authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 4. (1) The promoter shall submit a request for a show date no less than fourteen (14) calendar days before the requested date for approval by the Authority using the "Amateur MMA Show Notice Form", (04/06).

(2) There shall be no advertising of the event prior to this approval.

(3) Upon approval by the Authority, all advertisements shall include the promoter's license number.

Section 5. (1) The proposed program for a show shall be filed with the Authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be filed immediately with the Authority.

(2) If the Authority determines, after reviewing a contestants fight history, that a proposed bout would not be reasonably competitive, the bout may be denied.

(3) Amateur mixed martial arts contestants age thirty-five (35) and over shall be in the Masters Division and shall only compete against contestants within this division.

Section 6. (1) Before the commencement of a show, all changes or substitutions shall be:

(a) Announced from the ring; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 7. All shows shall be videotaped and retained by the promoter for one (1) year. Upon request of the Authority, the promoter shall provide the tape to the Authority during this time.

Section 8. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the Authority.

(2) No alcohol or smoking shall be allowed in the areas under the control of the Authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the Authority.

Section 9. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all sides of the ring.

(2) A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Aong the sides of the entry lane for contestants to enter the ring and the spectator area.

Section 10. The ring shall meet the following requirements:

(1) At bouts shall be held in a four (4) sided roped ring with the following specifications:

(a) The minimum size of the ring shall be 16 ft. x 16 ft., inside the ropes;

(b) The floor of the ring shall extend beyond the ropes for a distance not less than one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

(b) A fourth rope may be used if approved by the inspector or employee of the Authority prior to the commencement of the show;

(c) A rope shall be at least one (1) inch in diameter;

(d) A rope shall be wrapped in a clean, soft material and taut.

(e) A rope shall be held in place with vertical straps on each of the four (4) sides of the ring; and

(3) A rope shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter; and

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Is at least one (1) inch in thickness using slow recovery foam matting,

(b) Extends over the edge of the platform; and

(c) Is covered with a single canvas or a similar material stretched tightly.

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

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

(b) A fenced area used in a contest or exhibition of mixed martial arts shall meet the following requirements:

1. The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

2. The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas, duck or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in lumps or ridges shall not be used.

3. The platform of the fenced area shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

4. The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the
fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

6. Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed contestants.

7. The fenced area shall have at least one (1) entrance.

8. There shall be no protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

Section 11. A bell or horn shall be used by the timekeeper in indicating the time.

Section 12. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed.

(1) A public address system in good working order.

(2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the ring and the ring floor.

(3) Items for each contestant's corner, to include:

(a) A stool or chair;
(b) A clean bucket;
(c) Towels; and
(d) Rubber gloves.

(4) A complete set of numbered round-cards, if needed.

(5) A clean stretcher and a clean blanket, placed under or adjacent to the ring, throughout each program.

(6) First aid oxygen apparatus or equipment.

Section 13. A scale used for any weigh-in shall be approved in advance by the Authority.

Section 14. A promoter shall provide a minimum of two (2) security guards for the premises where shows are conducted to ensure the satisfaction of the Authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 15. All emergency medical personnel and portable medical equipment shall be stationed at ringside during the show. There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests. If the ambulance is required to leave the event for any reason, a contest shall not be allowed to continue until an ambulance is once again present and medical personnel are at ringside. Proof of ambulance coverage being scheduled shall be provided to the Authority no less than two (2) business days before the show.

Section 16. There shall be at least one (1) physician licensed by the Authority at ringside before a bout is allowed to begin. The physician shall have at ringside any medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show.

Section 17. A promoter shall provide insurance for his contestant for any injuries sustained in the mixed martial arts show. The minimum amount of coverage per contestant shall be $5,000 health and $5,000 accidental death benefits. A certificate of insurance coverage shall be provided to the Authority no less than two (2) business days before the show.

Section 18. A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts show is being held. This notice shall include the date, time, and location of the show. A copy of this notice shall be filed with the Authority no less than two (2) business days before the show.

Section 19. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the Authority. For each show, the Authority shall assign:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required;

(4) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required; and

(5) One (1) bout assistant.

Section 20. Unless the Authority approves an exception.

(1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed five (5) rounds in duration.

(2) A championship contest of mixed martial arts shall not exceed five (5) rounds in duration.

(3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 21. Weight Classes of Contestants; Weight Loss After Weigh-In. (1) Except with the approval of the Authority, the classes for contestants competing in an amateur mixed martial arts show and the weights for each class are shown in Table A.

<table>
<thead>
<tr>
<th>CLASS</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flyweight</td>
<td>Up to 115 lbs.</td>
</tr>
<tr>
<td>Lightweight</td>
<td>116 to 125 lbs</td>
</tr>
<tr>
<td>Super Lightweight</td>
<td>126 to 135 lbs</td>
</tr>
<tr>
<td>Welterweight</td>
<td>136 to 147 lbs</td>
</tr>
<tr>
<td>Middleweight</td>
<td>148 to 165 lbs</td>
</tr>
<tr>
<td>Super Middleweight</td>
<td>166 to 174 lbs</td>
</tr>
<tr>
<td>Light Heavyweight</td>
<td>175 to 189 lbs</td>
</tr>
<tr>
<td>Cruiserweight</td>
<td>190 to 204 lbs</td>
</tr>
<tr>
<td>Heavyweight</td>
<td>205 to 249 lbs</td>
</tr>
<tr>
<td>Super Heavyweight</td>
<td>Over 249 lbs</td>
</tr>
</tbody>
</table>

(2) After the weigh-in of a contestant competing in an amateur mixed martial arts show

(a) Change in weight in excess of three (3) pounds is not permitted for a contestant who weighed in at 145 pounds or less.

(b) Change in weight in excess of four (4) pounds is not permitted for a contestant who weighed in at over 145 pounds.

(3) The change in weight described in subsection (2) of this section shall not occur later than two (2) hours after the initial weigh-in.

(4) A contestant shall not be allowed to fight more than one (1) weight class above his weight.

Section 22. Glove Specifications. (1) The promoter shall supply all gloves for the event.

(2) Contestants shall wear gloves that are a minimum of six (6) oz and a maximum of eight (8) oz.

(3) Both contestants shall wear the same glove size.

Section 23. The following shall be prohibited:

(1) "Battle royal" as defined in 201 KAR 27:005, Section 1(2); and

(2) Use of excessive grease or any other substance that may handicap an opponent.

Section 24. (1) Any professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall be suspended for a period not less than one (1) week.

(2) Any promoter that allows a professional to compete against an amateur shall be suspended for period not less than one (1) year.

Section 25. Contestants Repeatedly Knocked Out, Defeated or Suspended. (1) A mixed martial arts contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting him to a tho-
Section 26. A person over the age of thirty-nine (39) shall not participate as a contestant in a mixed martial arts match without first submitting to a comprehensive physical examination by a physician licensed by the Authority. The results of the physical and medical examination or release shall then be completed and submitted to the Authority no later than fifteen (15) business days prior to the scheduled bout.

Section 27. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by any name other than that which appears on his license.

Section 28. A contestant shall not compete against a member of the opposite sex.

Section 29. A contestant shall not use a belt which contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 30. A mixed martial arts contestant shall:
(1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;
(2) Not wear shoes or any padding on his feet during the contest;
(3) Wear a groin protector; and
(4) Wear a mouthpiece.

Section 31. (1) The Authority may request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense.
(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the Authority may suspend or revoke the license of the contestant, or the Authority may impose a fine upon the contestant, or both.

Section 32. (1) Any contestant who has made a commitment to participate in an amateur mixed martial arts show and is unable to participate, for any reason, shall notify the promoter of the inability to participate no less than seven (7) days prior to the event.
(2) Failure to notify the promoter within the seven (7) days may result in immediate suspension pending investigation by the Authority and further disciplinary action may be taken by the Authority.

Section 33. Any mixed martial arts promoter or contestant whose license is suspended or revoked due to disciplinary actions shall be prohibited from attending all mixed martial arts events sanctioned by the Authority during the term of the suspension or revocation.

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

Section 35. The following moves are prohibited in amateur mixed martial arts shows:
(1) No elbow strikes to the head are allowed at any time.
(2) Knees to the head are permitted, but may only be used and delivered from a standing position.

Section 36. The following acts constitute fouls in mixed martial arts:
(1) Butting with the head;
(2) Eye gouging of any kind;
(3) Biting;
(4) Hair pulling;
(5) Fishhooking;
(6) Groin attacks of any kind;
(7) Putting a finger into any office or into any cut or laceration on an opponent;
(8) Small joint manipulation;
(9) Striking to the spine or the back of the head;
(10) Striking downward using the point of the elbow;
(11) Throat strikes of any kind, including grabbing the trachea;
(12) Clawing, pinching, or twisting the flesh;
(13) Grabbing the clavicle;
(14) Kicking the head of a grounded opponent;
(15) Kneeling the head of a grounded opponent;
(16) Stomping the head of a grounded opponent;
(17) Kicking to the kidney with the heel;
(18) Spiking an opponent to the canvas on his head or neck;
(19) Throwing an opponent out of the ring or fenced area;
(20) Holding the shorts of an opponent;
(21) Splitting at an opponent;
(22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent;
(23) Holding the ropes or the fence;
(24) Using abusive language in the ring or fenced area;
(25) Attacking an opponent on or during the break;
(26) Attacking an opponent who is under the care of the referee;
(27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;
(28) Flagrantly disregarding the instructions of the referee;
(29) Timidity, including avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or taking an injury;
(30) Interference by the corner; or
(31) The throwing by a contestant's corner staff of objects into the ring during competition.

Section 37. (1) If a contestant fouls his opponent during an amateur mixed martial arts show, the referee may penalize him by
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Deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.

(2) When the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(4) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

Section 38. (1) (a) If a bout of amateur mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the contestant who has been fouled is able to continue or not.

(b) If the contestant’s chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the Authority's representative of his determination that the foul was accidental.

(2) If the referee determines that a bout of amateur mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout shall be declared a no contest if the foul occurs during:

(a) The first two (2) rounds of a bout that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout that is scheduled for more than three (3) rounds.

(3) If an accidental foul renders a contestant unable to continue the bout, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout that is scheduled for more than three (3) rounds, the outcome shall be determined by scoring the completed rounds.

(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout.

(5) Any contestant committing a foul may be issued a violation by the inspector or employee of the Authority.

Section 39. A contest of amateur mixed martial arts may end in the following ways:

(1) Submission by:

(a) Physical tap out; or

(b) Verbal tap out.

(2) Technical knockout by the referee or physician stopping the contest.

(3) Decision via the scorecards, including:

(a) Unanimous decision;

(b) Split decision;

(c) Majority decision;

(d) Draw, including:

1. Unanimous draw;
2. Majority draw;
3. Split draw;

(4) Technical decision;

(5) Technical draw;

(6) Disqualification;

(7) forfeited; or

(8) No contest.

Section 40. Promoter Requirements upon Conclusion of the Show. (1) Within twenty-four (24) hours of the conclusion of a event, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the Authority the form "Amateur MMA Event Report," 04/08.

(2) Within twelve (12) hours of the conclusion of the event, the promoter shall:

(a) Submit the results from the amateur MMA event to the Authority;

(b) Shall ensure the passport of each contestant has been completed upon conclusion of the event.

Section 41. The following requirements apply to all bouts between female contestants:

(1) A contestant shall not wear facial cosmetics during the bout.

(2) A contestant with long hair shall secure her hair with soft and nonabrasive material.

(3) Weight classes shall be those established in section 21.

(4) A contestant shall wear a properly-fitted:

(a) Breast protector;

(b) Groin protector; and

(c) Mouthpiece.

(5) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout. These results must be submitted to the Authority no less than twenty-four (24) hours prior to the show.

Section 42. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Amateur MMA Passport," 4/08;

(b) "Amateur MMA Show Notice Form," 4/08; and

(c) "Amateur MMA Event Report," 4/08.

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

LARRY R. BOND, Acting Executive Director
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 23, 2008

FILED WITH LRC: July 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2008, at 9 a.m., at the Kentucky Boxing and Wrestling Authority office located at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by August 19, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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 Bond, Kentucky Boxing and Wrestling Authority, 500 Mero Street, Capitol Plaza Tower, 6th Floor, Office 601, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry R. Bond

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation sets forth detailed rules governing the conduct of amateur mixed martial arts shows or exhibitions.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure that amateur mixed martial arts shows and exhibitions in the Commonwealth of Kentucky are run in such a manner to protect the contestants and to establish uniform rules.
for the sport.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority’s jurisdiction, as well as to provide the professional staff necessary to properly regulate those events.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth in detail the rules governing the conduct of contestants at amateur mixed martial arts events and prohibits the sale of alcoholic beverages at such events.

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

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed athletes who participate in any amateur mixed martial arts events, licensed promoters who arrange these events and exhibitors and the officials who regulate these events will be impacted 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 contestants must have a passport, the promoters must obtain a surety bond and apply to be licensed as a promoter in the Commonwealth and the officials must obtain a license to officiate during a amateur show or exhibition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only cost for the contestants and officials will be for licenses. The cost for the promoters will be significantly different due to the compliance with professional regulations, which include cost for jury, insurance coverage, medical equipment and personnel.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to compete in the Commonwealth and be licensed by the Commonwealth and the officials will be able to officiate during a amateur show or exhibition.

(d) In the past, what benefits have been perceived by the entities identified in question (3): The benefits have been perceived by the entities are that they can compete in the Commonwealth and be licensed by the Commonwealth and the officials will be able to officiate during a amateur show or exhibition.

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

(a) Initially: Minimal, no new personnel will need to be hired. The regulatory framework is already in place due to the regulation of professional MMA.

(b) On a continuing basis: Minimal, see above.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the license fees paid by the regulated community.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding will be required to implement this administrative regulation, the current program will be paid for by license fees as are the other Kentucky programs.

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation creates an application and renewal fee for amateur MMA contestants.

9. TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, as there is no reason to discriminate among amateur mixed martial arts participants as a class.

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LOCAL GOVERNMENT 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
Board of Certification of Alcohol and Drug Counselors
(Non-Administrative Regulation)

201 KAR 35:060. Complaint procedure.

RELATES TO: KRS 309.0813(7), (11), 309.086
STATUTORY AUTHORITY: KRS 309.0813(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.086 delineates the causes for which disciplinary action may be taken against a certificate holder. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chair" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which may constitute a violation of KRS Chapter 309, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the executive director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the
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court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at
any stage of the disciplinary process with the intent of reaching a
dispensation of any matter without further recourse to formal dis-
ciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual appointed by the board
to assist the board in the investigation of a complaint or an investi-
gator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:
(a) May be submitted by en:
1. Individual;
2. Organization; or
3. Entity.
(b) Shall be
1. In writing; and
2. Signed by the person offering the complaint.
(c) May be filed by the board based upon information in its
possession.

(2) Upon receipt of a complaint:
(a) A copy of the complaint shall be sent to the individual
named in the complaint along with a request that such individual’s
response to the complaint. The individual shall be allowed a period
of twenty (20) days from the date of receipt to submit a written
response.
(b) Upon receipt of the written response of the individual
named in the complaint, a copy of the response shall be sent to the
complainant. The complaint shall have seven (7) days from re-
cipient to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint
and the expiration of the period for the individual’s response, the
complaint screening committee shall consider the individual’s re-
sponse, complainant’s reply to the response, and any other rele-
vant material available and make a recommendation to the board.
The names of the individuals and other identifying information are
redacted to provide anonymity. The board shall determine whether
there is enough evidence to warrant a formal investigation of the
complaint.

(2) If the board determines before formal investigation that a
complaint is without merit, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and respondent of the board’s deci-
dion.

(3) If the board determines that a complaint warrants a formal
investigation, it shall:
(a) Authorize an investigation into the matter; and
(b) Order a report to be made to the complaint screening
committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on
Hearing. (1) Upon completion of the formal investigation, the inves-
tigator shall submit a report to the complaint screening committee
of the facts regarding the complaint. The complaint screening
committee shall review the investigative report and make a rec-
ommendation to the board. The board shall determine whether
there has been a prima facie violation of KRS Chapter 309 or the
administrative regulations promulgated thereunder and a complaint
should be filed.

(2) If the board determines that a complaint does not warrant
the issuance of a formal complaint, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and respondent of the board’s deci-
dion.

(3) If the board determines that a violation has occurred but is
not serious, the board may issue an written admonishment to the
licensee. A copy of the written admonishment shall be placed in
the permanent file of the licensee. The licensee shall have the right
to file a response in writing to the admonishment within thirty (30)
days of its receipt and may have it placed in his permanent file.
Alternatively, the licensee may file a request for a hearing with the
board within thirty (30) days of the admonishment. Upon receipt of
the request, the board shall set aside the written admonishment
and set the matter for hearing pursuant to the provisions of KRS
Chapter 13B.

(4) If the board determines that a complaint warrants the is-
suance of a formal complaint against the respondent counsel for
the board, in conjunction with the complaint screening committee,
shall prepare a formal complaint which states clearly the charge or
charges to be considered at the hearing. The formal complaint
shall be reviewed by the board, and if approved, sent by the
chair and served upon the individual as required by KRS Chapter
13B. The formal complaint shall be processed in accordance with
KRS Chapter 13B.

(5) If the board determines that a person may be in violation of
KRS 309.0805(1), it shall:
(a) Order the individual to cease and desist from further viola-
tions of KRS 309.0805(1); or
(b) Initiate action in Franklin Circuit Court pursuant to KRS
309.0813(13) for injunctive relief to stop the violation of KRS
309.0805(1).

Section 5. Settlement by Informal Proceedings. (1) The board
through counsel and the complaint screening committee may, at
any time during this process, enter into informal proceedings with
the individual who is the subject of the complaint for the purpose of
appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process
shall be approved by the board and signed by the individual who is
the subject of the complaint and the chair.

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

Section 6. Notice of Service of Process. A notice required by
KRS Chapter 309 or this administrative regulation shall be issued
pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) "Complaint Form",
2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Board of Certifica-
tion of Alcohol and Drug Counselors, 911 Leawood Drive, Frank-
fort, Kentucky, telephone (502) 564-3266, ext. 222, Monday
through Friday, 8:30 a.m. to 5 p.m.

This is to certify that the Chair of the Kentucky Board of Certifi-
cation of Alcohol and Drug Counselors executes this administrative
regulation prior to filing, pursuant to the authority granted by sta-
tute, 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 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH LRC: July 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
August 22, 2008, at 3 p.m. local time, at the Kentucky Board of
Certification of Alcohol and Drug Counselors, 911 Leawood Drive,
Frankfort, Kentucky. Individuals interested in being heard at this
hearing shall notify this agency in writing five (5) workdays prior
to the hearing, of their intent to attend. If no notification of intent
to attend the hearing is received by that date, the hearing may be
canceled. 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 September 2,
2008. Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation to the contact person.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky
Division of Occupations and Professions, 911 Leawood Drive,
Frankfort, Kentucky 40601, phone (502) 564-3236, fax (502) 564-
4818.
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 309.086 delineates the causes for which disciplinary action may be taken against a certificate holder. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

(b) The necessity of this administrative regulation: The necessity of this regulation is to place certificate holders on notice of the procedures that will be followed in the event a complaint is filed against them.

(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 establishing grounds and procedures for denying, suspending, failing to issue, or revoking a certificate and issuing reprimands and admonishments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation specifies the procedures for addressing a complaint filed against a certificate holder.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 686 certificate holders 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) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: In the event a letter of complaint is filed against a certificate holder, the certificate holder is required to file a letter of response with the board and cooperate with any request made by the board or an investigation, if one is deemed necessary. If the matter results in the filing of formal charges in the form of an administrative complaint, the process set forth in KRS Chapter 13B shall be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs involved in defending allegations before a licensure board vary depending upon whether or not the certificate holder obtains legal counsel or proceeds pro se. Other variables include pre trial preparation, time lost from work, etc. It should also be mentioned that legal costs vary from region to region and among various cities. Therefore, it is impossible to estimate the cost of legal defense.

(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 is funded by fees paid by certificate holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all certificate holders.

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 Certification of Alcohol and Drug Counselors is attached for administrative purposes to the Division of Occupations and Professions in the Finance and Administration Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.081(8), (7), (11), and 309.086.

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 is not expected to generate any revenue for any 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 is not expected to generate any revenue for any state or local government.

(c) How much will it cost to administer this program for the first year? The board's operation is funded by fees paid by certificate holders and applicants. It will not cost any additional money to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? The board's operation is funded by fees paid by certificate holders and applicants. It will not cost any additional money to administer this regulation.

GENERAL GOVERNMENT CABINET
Board of Certification of Alcohol and Drug Counselors
(New Administrative Regulation)

201 KAR 35:070. Supervision and work experience.

RELATES TO: KRS 309.083(4)
STATUTORY AUTHORITY: KRS 309.0813(1) and (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. In addition, KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be certified. KRS 309.083(4) requires all applicants for certification as an alcohol and drug counselor to have completed 300 hours of board-approved experience working with alcohol or other dependent persons under the direct supervision of a certified alcohol and drug counselor who has at least two (2) years of postcertification experience. The administrative regulation sets forth the standards for the accumulation of the required supervised work experience.

Section 1. Definitions. (1) "Clinical supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional-develop-
ment of the supervisee in providing services related to the twelve core functions of the alcohol and drug counselor.

(2) "Clinical supervisor" means a certified alcohol and drug counselor who has at least two (2) years of postcertificate experience and who provides supervision to no more than twelve (12) applicants in an individual or group setting at any one (1) time, and whose certificate is currently in good standing with the board.

(3) "Work experience" is defined as the hours spent performing the services, tasks and reports necessary to providing counseling and/or intervention to chemically dependent person(s) or significant others.

Section 2. Clinical supervision. (1) Clinical supervision shall consist of at least 300 hours, and shall include a minimum of ten (10) hours in each of the twelve (12) core functions:

(a) Screening;
(b) Intake;
(c) Client orientation;
(d) Assessment;
(e) Treatment planning;
(f) Counseling;
(g) Case management;
(h) Crisis intervention;
(i) Client education;
(j) Referral;
(k) Reports and recordkeeping; and
(l) Consultation.

(2) Clinical supervision may occur in individual or group settings. The methods of clinical supervision shall include:

(a) Face-to-face;
(b) Video conferencing; or
(c) Teleconferencing.

(3) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(4) Clinical supervisors shall complete and submit the Supervisor's form in the Application for Certification as an Alcohol and Drug Counselors that documents the 300 hours of supervision that has occurred during the work experience.

Section 3. Accumulation of Work Experience. (1) 6,000 hours of work experience shall be accumulated in a setting where chemical dependency services are routinely provided.

(2) Supervised work experience shall be in the twelve (12) core functions referenced in Section 2 of this administrative regulation to enhance the candidate's understanding and application of the twelve (12) core functions to the practice of alcohol and drug counseling.

(3) The work experience may be either paid or unpaid.

Section 4. Substitution of Work Experience. An applicant may substitute a degree in a related field to include, but not limited to, Addictions, Counseling, Psychology, Psychiatric Nursing, or Social Work, for part of the work experience. Requests for substitution shall be submitted to the board along with transcripts from an accredited College or University. Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

(1) A master's degree or higher in a related field, as defined above, with a specialization in addictions/drug and alcohol counseling may be substituted for 4,000 hours of work experience.

(2) A master's degree or higher in a related field, as defined above, may be substituted for 3,000 hours of work experience.

(3) A bachelor's degree in a related field, as defined above, may be substituted for 2,000 hours of work experience.

A bachelor's degree in an unrelated field shall not qualify for a substitution of hours and the applicant shall provide proof of 6,000 hours of work experience as set forth in Section 3 of this administrative regulation.

(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor(s).

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors 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 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH LRC: July 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 2008, at 3 p.m. local time, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 September 2, 2008. 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: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann, Director
(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 309.083(4) requires all applicants for certification as an alcohol and drug counselor to have completed 300 hours of board-approved experience working with alcohol or drug dependent persons under the direct supervision of a certified alcohol and drug counselor who has at least two (2) years of postcertification experience. This administrative regulation sets forth the standards for the accumulation of the required supervised work experience.

(b) The necessity of this administrative regulation: Applicants for certification are required to obtain 300 hours of supervised work experience. It is essential to set forth the standards necessary for approval of certification. Said standards help to ensure the applicant's understanding and application of the 12 core functions to the practice of alcohol and drug counseling.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.081(3) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. In addition, KRS 309.081(3) requires the board to approve or disapprove those persons who shall be certified. KRS 309.083(4) requires all applicants for certification as an alcohol and drug counselor to have completed 300 hours of board-approved experience working with alcohol or drug dependent persons under the direct supervision of a certified alcohol and drug counselor who has at least two (2) years of postcertification experience. This administrative regulation sets forth the standards for the accumulation of the required supervised work experience.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Setting forth the standards for the supervised work experience helps to direct the applicants through the application process. Additionally, it provides crucial information regarding the board's expectations which increases the likelihood of approval.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A
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regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are approximately 50 applicants for certification as alcohol and drug counselors in the Commonwealth of Kentucky 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:
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide clarity to applicants for certification by specifically addressing the supervision and work experience qualifications which are necessary for approval.
(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.
(c) 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 certificate holders and applicants.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this new administrative regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants for 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 Kentucky Board of Certification of Alcohol and Drug Counselors is attached for administrative purposes to the Finance and Administration Cabinet.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.083(4) and 309.081(1), (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? It is not anticipated that this administrative regulation will generate any revenue for the state or local governments 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? It is not anticipated that this administrative regulation will generate any revenue for state or local governments.
(c) How much will it cost to administer this program for the first year? The board's operation is funded by fees paid by certificate holders and applicants. It will not cost any additional money to administer this regulation.
(d) How much will it cost to administer this program for subsequent years? The board's operation is funded by fees paid by certificate holders and applicants. It will not cost any additional money to administer this regulation.

GENERAL GOVERNMENT CABINET
Board of Certification of Alcohol and Drug Counselors
(New Administrative Regulation)

201 KAR 35.080. Voluntary Inactive Status.

RELATES TO: KRS 309.0813(12)
STATUTORY AUTHORITY: KRS 309.0813(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be certified. This administrative regulation allows credential holders to place their certificate in voluntary inactive status for a period of time that they do not intend to actively practice alcohol and drug counseling in the Commonwealth of Kentucky.

Section 1. Conditions for application for voluntary inactive status. Voluntary inactive status is intended for the credential holder who is currently not working as an alcohol and drug counselor, yet plans to someday return to alcohol and drug counseling. The Kentucky Board of Certification of Alcohol and Drug Counselors shall grant inactive status when the following conditions apply:
(1) Medical problems;
(2) Maternity, paternity, or family;
(3) Education;
(4) Military service; or
(5) Other valid reasons.

Section 2. Instructions for Application for Voluntary Inactive Status. (1) Credential holders desiring inactive status shall send a letter of request to the office of the Kentucky Board of Certification of Alcohol and Drug Counselors and include the following information:
(a) Current home address and telephone number;
(b) Reason for request;
(c) Final date of employment in the alcohol and drug field;
(d) Anticipated date of return to employment in the alcohol and drug field; and
(e) Nonrefundable enrollment fee as set forth in 201 KAR 35.020, Section 7.
(2) The request for voluntary inactive status will be placed on the agenda of the next regularly-scheduled meeting of the Kentucky Board of Certification of Alcohol and Drug Counselors for their consideration.
(3) The applicant shall be notified of the board’s decision no later than two (2) weeks after the board’s meeting.

Section 3. Terms and Responsibilities. (1) While on voluntary inactive status, an individual shall continue to receive all bulletins, newsletters, and other communications from the Kentucky Board of Certification of Alcohol and Drug Counselors;
(2) A counselor on voluntary inactive status may not use the initials of a certified counselor (e.g. CADC);
(3) Individuals on voluntary inactive status are not eligible for reciprocity;
(4) Individuals on voluntarily inactive status are expected to subscribe to any of the applicable aspects of the Kentucky Code of Ethics as set forth in 201 KAR 35.030; and
(5) The voluntarily inactive individual shall immediately notify the Kentucky Board of Certification of Alcohol and Drug Counselors upon returning to work in the alcohol and drug field and pay
the reactivation fee set forth in 201 KAR 35:020, Section 7.
(6) Failure to notify the Board within thirty (30) days of returning to such employment shall constitute a violation of the Kentucky Board of Certification of Alcohol and Drug Counselors Code of Ethics and will result in referral to the Board for investigation, in accordance with the procedures outlined in the Code of Ethics.

Section 4. Reactivation. (1) Individuals requesting reactivation of their certification status shall send a letter of request to the office of the Kentucky Board of Certification of Alcohol and Drug Counselors and shall include the following information:
(a) Current home address;
(b) Description of change of circumstances allowing active participation in the field;
(c) Address of employing agency, if applicable;
(d) Submission of proof of attendance of continuing education as required by 201 KAR 35:040; and
(e) Nonrefundable reactivation fee as set forth in 201 KAR 35:020, Section 7.
(2) The request for reactivation shall be considered at the next regularly-scheduled meeting of the Kentucky Board of Certification of Alcohol and Drug Counselors.
(3) The applicant shall be notified within two (2) weeks of the Board's decision.

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors 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 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH LRC: July 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 2008, at 3 p.m. local time, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Anyone 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 September 2, 2008. Send written notification of intent to attend the hearing to the Director at 911 Leawood Drive, Frankfort, KY 40601, phone (502) 564-3296, fax (502) 564-4818.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Gerald Hoppmann, Director
(1) What this administrative regulation does:
(a) This administrative regulation sets forth the criteria for placing a certificate in voluntary inactive status. Credential holders are advised of the terms and responsibilities of placing their certificate in this status and how to reactivating their certificate.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to provide the ability for credential holders to place their certificate in inactive status while not working in the field. This sees the certificate holder money during a period of time when they are not using their certificate. It also provides an option enabling the certificate holder to avoid letting the credential lapse and then having to apply for reinstatement or submitting an entirely new application for certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.081(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.081(3) requires the board to approve or disapprove those persons who shall be certified.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows credential holders to provide their certificate in voluntary inactive status for a period of time that they do not intend to actively practice alcohol and drug counseling in the Commonwealth of Kentucky.
(2) If the amendment is to an existing administrative regulation, provide a brief summary of: Not applicable.
(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: Currently there are 689 certified alcohol and drug counselors in the Commonwealth of Kentucky. It is unknown at this time how many practitioners will take advantage of this provision.
(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) If the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: If a certificate holder wishes to place their credential in inactive status they must send a detailed letter to the board requesting inactive status per Sections 1 and 2 of this administrative regulation. Applicants pay a reduced certification fee and shall not practice alcohol and drug counseling until such time as they reactivate their credential. Inactive certificate holders may reactivate their credential by sending a letter of request to the board, paying the reactivation fee and submitting proof of attendance of continuing education in accordance with 201 KAR 35:040.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The enrollment fee for voluntarily placing a certificate in inactive status in accordance with 201 KAR 35:040 shall be $50. The annual renewal fee for certificates enrolled in inactive status shall be $25. The fee for reactivation is $200 for a three (3) year period commencing on the date the Board approves the application for reactivation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows credential holders to place their certificate in voluntary inactive status for a period of time that they do not intend to actively practice alcohol and drug counseling in the Commonwealth of Kentucky. This sees the certificate holder money during a period of time when they are not using their certificate. It also provides an option enabling the certificate holder to avoid letting the credential lapse and then having to apply for reinstatement or submitting an entirely new application for certification.
(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 is funded by fees paid by certificate holders and applicants.
(7) Provide an assessment of whether an increase in fees or
Funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this new administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all certificate holders.

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 Certification of Alcohol and Drug Counselors is housed for administrative purposes in the Division of Occupations and Professions in the Finance and Administration Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), and (12).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? As this is a new program, it is impossible to estimate the number of credential holders who will take advantage of the provision and voluntarily place their certificate in inactive status. At the present time there are a total of 686 certified alcohol and drug counselors in Kentucky.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See the answer to (4)(a) above.
   (c) How much will it cost to administer this program for the first year? The costs to administer the program for alcohol and drug counselors by the board is paid for by the fees generated from certificate holders. No additional costs are anticipated.
   (d) How much will it cost to administer this program for subsequent years? See the answer to (4)(c) above.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(New Administrative Regulation)

202 KAR 7:330. Requirements for examination, certification and recertification of the advanced emergency medical technician.

RELATES TO: KRS 311A.010, 311A.025, 311A.027, 311A.050, 311A.055, 311A.060, 311A.065, 311A.075, 311A.090, 311A.095, 311A.100, KRS 311A.110, KRS 311A.145

STATUTORY AUTHORITY: KRS 311A.020, KRS 311A.025, KRS 311D.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the Kentuck Board of Emergency Medical Services to promulgate administrative regulations relating to Advanced Emergency Medical Technicians. This administrative regulation establishes requirements for examination, certification, and recertification of the intermediate level of emergency medical technicians, also known as "AEMT".

Section 1. Student Eligibility. Individuals shall be eligible to enroll as a student in an AEMT training program if the applicant:
   (1) Is at least eighteen (18) years of age;
   (2) Holds a current unrestricted certification as a Nationally Registered Emergency Medical Technician-Basic or unrestricted certification as a Kentucky Emergency Medical Technician-Basic;
   (3) Holds a college degree, high school diploma, GED, or equivalent;
   (4) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as needed;
   (5) Is not subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;
   (6) Meets any additional requirements established by the EMS-TEI; and
   (7) Holds a valid motor vehicle operators' license from a state or territory in the United States.

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an AEMT shall:
   (a) Meet all of the requirements of Section 1 of this administrative regulation;
   (b) Successfully complete a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technicians as the curriculum for education;
   (c) Obtain National Registry of Emergency Medical Technicians’ registration as a Registered EMT Intermediate/85, Registered EMT Intermediate/99, or Registered Advanced Emergency Medical Technician;
   (d) Submit a signed "Application for Advanced Emergency Medical Technician Initial Certification";
   (e) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
   (f) Pay the fee required by 202 KAR 7:330; and
   (g) Present written evidence of completion of current training in cardiopulmonary resuscitation that shall:
      1. Be taught by an individual who holds one (1) of the following instructor certification approved by the board at an appropriate level from:
         a. The American Red Cross;
         b. The American Heart Association;
         c. The National Safety Council;
         d. The American Health and Safety Institute; or
         e. Another board approved organization.
      2. The course shall provide instruction and testing in:
         a. One (1) rescuer cardiopulmonary resuscitation;
         b. Two (2) rescuer cardiopulmonary resuscitation;
         c. Techniques of changing from one (1) to two (2) rescuers during the performance of cardiopulmonary resuscitation;
         d. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;
         e. Techniques for relief of obstruction of the airway;
         f. Cardiopulmonary resuscitation of infants and small children;
         g. Barrier-to-mouth, barrier-to-nose, or barrier-to-stoma resuscitation for adults, small children, and infants;
         h. Use of oral and nasal airways;
         i. Use of bag-valve-mask or other ventilation device;
         j. Use of supplemental oxygen; and
         k. Use and operation of an AED.
   (2) An applicant for certification as an Advanced Emergency Medical Technician shall successfully complete all National Registry testing and become Kentucky-certified within two (2) years after the completion date of their AEMT course.

Section 3. Expiration of Certification. (1) Initial certification periods shall be for a minimum of twelve (12) but shall not exceed twenty-four (24) months.
   (2) Subsequent recertification shall be for twenty-four (24) months and shall expire on December 31 of subsequent recertification cycles.
   (3) Upon expiration of certification, an AEMT shall not practice as an AEMT or perform a procedure authorized for a certified AEMT, or hold themselves out to be an AEMT, in accordance with KRS 311A.050.
Section 4. Recertification and Continuing Education Requirements. (1) A Kentucky-certified AEMT shall be eligible for recertification if the applicant submits to the Board:
(a) A signed "Universal Application for Renewal;"
(b) Written evidence of current completion of training in cardopulmonary resuscitation meeting the requirements as outlined in Section 2 of this administrative regulation;
(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110; and
(d) The fee established in 202 KAR 7:030.
(2) The applicant shall maintain evidence of either:
(a) Current registration by the National Registry of Emergency Medical Technicians as an AEMT, EMT-Intermediate/65 or EMT Intermediate/96; or
(b) Successful completion of the AEMT continuing education requirement that includes forty-eight (48) total contact hours of which twelve (12) hours may be in subject areas chosen by the AEMT and the remaining thirty-six (36) hours shall include the following minimum contact hours and topics:
1. Five (5) hours in preparatory;
2. Five (5) hours in airway management and ventilation;
3. Twelve (12) hours in medical, including cardiology;
4. Eight (8) hours in trauma;
5. Four (4) hours in special considerations; and
6. Two (2) hours in operations.
(3) The training shall be validated by:
(a) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or
(b) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad or other medical employer.
(4) An application for renewal of certification shall be denied if:
(a) Prior to the certification expiration date, the AEMT applicant has failed to meet the applicable requirements of this section; or
(b) The applicant has been subjected to disciplinary action that prevents recertification at the time of application.
(5) A certified AEMT, in good standing, who is a member of any branch of the United States military or a National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 U.S.C. 121 and 673b may be given an extension for a period up to one (1) year after release from active duty to meet the applicable requirements for recertification listed in this administrative regulation. The AEMT shall submit a written request for this extension within sixty (60) days of release of active duty.
(6) The KBEMS office may audit an AEMT's continuing education and continuing education records.
(7) The AEMT shall maintain documentation of all continuing education for four (4) years from the date of completion.

Section 5. AEMT Reciprocity. (1) A person certified in another state or territory of the United States or member of the United States military who is registered by the NREMT as an Advanced EMT shall be eligible for direct reciprocity for initial Kentucky certification as an AEMT if the individual:
(a) Is at least eighteen (18) years of age;
(b) Holds current unrestricted registration as a NREMT-B;
(c) Has successfully completed a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technician as the curriculum for education, which shall not be satisfied by the completion of refresher or transition courses alone;
(d) Holds a college degree, high school diploma, GED or equivalent, and
(e) Holds a valid motor vehicle operators license from a state or territory in the United States.
(2) The individual shall:
(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;
(b) Submit a completed and signed "Advanced Emergency Medical Technician Initial Certification Application;"
(c) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(d) Present written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
(e) Pay the fee required by 202 KAR 7:030;
(f) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense;
(g) Not have been subjected to discipline that would prevent reciprocity at the time of application; and
(h) Have successfully completed a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician - Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technician as the curriculum for education;

Section 6. Exemptions from AEMT Administrative Regulations. Certification requirements for an AEMT shall not apply to:
(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government owned or operated facility, while engaged in the performance of their official duties under federal law or while providing assistance in mass casualty or disaster type situation; or
(2) An AEMT certified in another state or territory of the United States who:
(a) Comes into Kentucky to transport a patient from another state into Kentucky; or
(b) Is transporting a patient from an out-of-state location through the state of Kentucky to an out-of-Kentucky location.

Section 7. Reinstatement of Certification. (1) An AEMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting:
(a) A completed and signed "Advanced Emergency Medical Technician Certification Reinstatement Application;"
(c) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;
(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(d) Payment of the fee established in 202 KAR 7:030;
(e) Evidence of previous certification as an AEMT in Kentucky;
(f) Evidence of successful completion within twelve (12) months preceding their application for reinstatement of the AEMT continuing education requirement that includes forty-eight (48) total contact hours of which twelve (12) hours may be in subject areas chosen by the AEMT and the remaining thirty-six (36) hours shall include the following minimum contact hours and topics:
1. Five (5) hours in preparatory;
2. Five (5) hours in airway management and ventilation;
3. Twelve (12) hours in medical, including cardiology;
4. Eight (8) hours in trauma;
5. Four (4) hours in special considerations; and
6. Two (2) hours in operations; and
(g) Evidence of validation of skills maintenance by completing the "Advanced EMT Recertification Report.
(2) An AEMT, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.
(3) An application for reinstatement of certification shall not be considered if:
(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;
(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or
(c) The applicant has been subjected to discipline that would
prevent reinstatement at the time of application.

Section 8. Public Notice of Negative Action. The KEBMS office shall cause to be published, in the KEBMS News or similar publication of the board, or otherwise disseminate the name of an AEMT that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.

Section 9. Temporary Certificate. (1) KEBMS staff may issue a temporary certificate to an individual who:
(a) submits a completed "Application for Temporary Certificate";
(b) is at least eighteen (18) years of age;
(c) understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;
(d) provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT as an AEMT, EMT-Intermediate, or EMT-Intermediate/98;
(e) presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(f) presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
(g) pays the fee required by KAR 7.030;
(h) provides the board with a copy of a statewide criminal background check from their state of residence;
(i) is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and
(j) has not been disciplined by or has action pending against him or her for certification or license in the field of health care denied, limited, suspended, or revoked by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be renewed.

Section 10. Effective Date. This administrative regulation shall become effective immediately upon passage for those individuals that have completed a board approved Advanced EMT pilot program and whom meet the requirements of Section 2 of this administrative regulation. The regulation shall become effective without restriction on January 31, 2008, absent further action by the board.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) The United States Department of Transportation, National Highway Traffic Administration, "Scope of Practice Model based curriculum for Advanced Emergency Medical Technician", February 2007;
(c) The "Application for Advanced Emergency Medical Technician Initial Certification", July 2008;
(d) The "Universal Application for Renewal", July 2008;
(e) "The Kentucky Board of Emergency Medical Services AEMT Minimum Continuing Education Requirements. Total Contact Hours", July 2008;
(f) "The Advanced Emergency Medical Technician Certification Reinstatement Application", July 2008; and

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, KCTCS, 300 N. Main Street, Versailles, Kentucky 40383, Monday through Friday, 8 a.m. to 4:30 p.m.

ROB ROTHENBURGER, Judge, Chairman
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 11, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 26, 2008 at 10 a.m. at the Kentucky Community and Technical College System, Room 102B, 300 N. Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, August 19, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 2, 2008. 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: Lee W. Rowland, Esq., Legal Counsel, Kentucky Board of Emergency Medical Services, 300 N. Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee W. Rowland, Esq.
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes requirements and procedures for certification, recertification, and reciprocity for advanced emergency medical technicians by the Kentucky Board of Emergency Medical Services.
(b) The necessity of this administrative regulation: This regulation is necessary to conform within the requirements of KRS 311A.025, which provides for the board to promulgate administrative regulations for any certification that shall, at a minimum, address the eligibility and requirements for students, training, certification, recertification, and reciprocity for the created level of certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 311A.025 provides for the establishment of requirements and procedures for certification, recertification and reciprocity for the created level of certification.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes the requirements and procedures for certification, recertification, and reciprocity for advanced emergency medical technicians.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the requirements and procedures for an estimated 50 advanced emergency medical technicians over the first 2 years from enactment of this regulation.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The advanced emergency medical technicians will be required to comply with the applicable provisions of this regulation.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3): The advanced emergency medical technicians will be required to comply with the application fee and costs as provided in 202 KAR 7.030.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will be certified as advanced emergency medical technicians.

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

(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in existing fees or funding will be necessary to implement this regulation. However, fees for certification and recertification will be created by the board in this discipline did not previously exist in the board structure.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does establish fees indirectly by its requirement of fees for the certification and recertification process.

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes requirements and procedures for advanced emergency medical technicians only.

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)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? N/A

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. N/A

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(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 (+/-): N/A

      Expenditures (+/-): N/A

      Other Expenditures (+/-): N/A

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Repeater)

401 KAR 5:012. Repeal of 401 KAR 5:040.

RELATED TO. KRS 224.10-110, KRS 224.16-050, 224.73-110.

STATUTORY AUTHORITY: KRS 224.10-110, 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 434, Subpart G, 33 U.S.C. 1311

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to exercise general supervision of the rules, administrative regulations, and orders promulgated in accordance with KRS Chapter 224. This administrative regulation repeals Kentucky's current administrative regulation pertaining to treatment requirements for coal mining operations because it is no longer consistent with federal regulations.

Section 1. 401 KAR 5:040, Treatment requirements, coal mining operations, is hereby repealed.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 9, 2006
FILED WITH LRC: July 14, 2006
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008.

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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Feilley Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzeszky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 401 KAR 5:040 Treatment requirements, coal mining operations.

(b) The necessity of this administrative regulation: The January 23, 2002 promulgation of 40 C.F.R. 434 Subpart G is more stringent than the state regulations, so the federal regulation applies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The repeal of 401 KAR 5:040 complies with KRS 224.10-100, which authorizes the cabinet to exercise general supervision of the rules, regulations, and orders promulgated in accordance with KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation repeals 401 KAR 5:040, a regulation related to coal mining operations. Regulation 401 KAR 5:040 less stringent than 40 C.F.R. 434 Subpart G.

(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; this is not an amendment.

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

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable; this is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable; this is not an amendment.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: Coal mining operations will be affected by the repeal of 5:040. There is one business with an existing mining operation permit.

(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:

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(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 change should cause very little additional impact. Coal mining operations will comply with 40 C.F.R. 434 Subpart G. This requirement is already in effect because compliance with Subpart G is already required pursuant to the application of technology-based effluent limits in KPDES permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entity identified in question (3) will not experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of 401 KAR 5:040 is expected to have no effect because the more stringent requirements of 40 C.F.R. 434 Subpart G already apply.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Instinct: No additional burden is anticipated.

(b) On a continuing basis: No additional burden is anticipated.

(What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no change in source of funding because of this repeal.

(7) Provide an assessment of whether an 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 are expected to support this repeal.

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

(9) TIERING: Is tiering applied? Tiering is not applicable; the regulation is being repealed.

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)?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by the administrative regulation? The requirements for coal mining operations will no longer be contained in Kentucky's administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224.

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 repeal should have no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal is not expected to generate additional state or local government 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? None.

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. Repeal of 401 KAR 5:040 clarifies that coal mining operations are governed by the more stringent provisions of the federal effluent guidelines that are required by 401 KAR 5:050 and 401 KAR 5:060.

3. Minimum or undefined standards contained in the federal mandate. The federal standard requires that permit holders meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387). Specifically, coal mining standards are pursuant to 40 C.F.R. 434 Subpart G.

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.

ENERGY AND ENVIRONMENT CABINET
Division of Water
(New Administrative Regulation)

401 KAR 5:052. Requirements applicable to cooling water intake structures for facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 125.80-125.89

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Energy and Environment Cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into waters of the Commonwealth. KRS 224.16-050 provides that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Clean Water Act, 33 U.S.C. Section 1251-1387, subject to the conditions imposed in 33 U.S.C. Section 1342(b) and (d). This administrative regulation establishes the requirements applicable to cooling water intakes structures for new facilities under Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

Section 1. Requirements for New Facilities. (1) Requirements for new facilities pursuant to Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), shall be as established in the following federal regulations:

(a) 40 C.F.R. 125.80, July 1, 2007;
(b) 40 C.F.R. 125.81, July 1, 2007;
(c) 40 C.F.R. 125.82, July 1, 2007;
(d) 40 C.F.R. 125.83, July 1, 2007;
(e) 40 C.F.R. 125.84, July 1, 2007;
(f) 40 C.F.R. 125.85, July 1, 2007;
(g) 40 C.F.R. 125.86, July 1, 2007;
(h) 40 C.F.R. 125.87, July 1, 2007;
(i) 40 C.F.R. 125.88, July 1, 2007;
(j) 40 C.F.R. 125.89, July 1, 2007.

(2) Substitutions The following terms shall be substituted in the federal regulations cited in subsection (1) of this section:

(a) "Waters of the Commonwealth" shall replace "Waters of the United States";
(b) "Cabinet" shall replace "Director".

Section 2. Political subdivisions and interstate agencies may adopt or enforce requirements that are more stringent than this administrative regulation.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 9, 2008
FILED WITH LRC: July 14, 2008
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex,
Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, 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. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. Send written notification of intent to be heard at the public hearing and written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: For point source dischargers, this administrative regulation implements Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), to ensure that the design, construction, and capacity of cooling water intake structures reflect the best technology available to protect aquatic organisms from being killed or injured by impingement (being pinned against screens or other parts of a cooling water intake structure) or entrainment (being drawn into cooling water systems and subjected to thermal, physical or chemical stresses).
(b) The necessity of this administrative regulation: All NPDES delegated states must have compatible state regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.15-050 which authorizes the Environmental and Public Protection Cabinet to implement the Federal Water Pollution Control Act. This regulation provides specific requirements for permitting dischargers that have cooling water intake structures. This regulation is consistent with the pollution prevention goals of KRS Chapter 224.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the administration of KRS 224.15-050 by providing requirements for cooling water structures. The regulation is consistent with the governing federal regulations relevant to cooling water structures.
(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; this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Not applicable; this is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable; this is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable; 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 regulation affects power plants that have both KPDES permits and cooling water intake structures. This regulation affects new cooling water intakes and is expected to affect less than one entity per 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 the changes, 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 cooling water intakes, the regulated entities will have to construct cooling water intakes using best available technology to prevent death or injury to aquatic organisms.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs were reviewed pursuant to promulgation of the federal rule. All delegated states must have regulations consistent with the federal regulations. This regulation is consistent with the federal regulation of cooling water intakes.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will have contributed to the environmental protection goals of the Clean Water Act and KRS Chapter 224.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(i) Initially: No additional burden is anticipated.
(ii) On a continuing basis: No additional burden is anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because 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 additional fees or funding are expected to support this regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not directly or indirectly affect fees.
(9) TIERING: Is tiering applied? To the extent that corresponding federal regulations provide for tiering, this regulation is tiered. The federal regulations provide tiered regulatory requirements through the identification of the size of the cooling water intake.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects units of state or local governments that have a KPDES discharge associated with an electric power plant.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation is expected to affect less than one state or local government agency per year. There is no expected effect on expenditure or revenue for local government agencies during the first year that this regulation is in effect.
5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no expected effect during the first year of this regulation.
6. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
7. How much will it cost to administer this program for the first year? No additional cost is expected.
8. How much will it cost to administer this program for subsequent years? No additional cost is expected.

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 cost of compliance was evaluated during the federal promulgation of this regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

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2. State compliance standards. This regulation establishes state standards to match corresponding federal regulations and statutes.

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primary states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1307).

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(New Administrative Regulation)

401 KAR 11:001. Definitions for 401 KAR Chapter 11.

RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.11-10

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of operators. This administrative regulation establishes definitions applicable to the certification of operators.

Section 1. Definitions. The following terms shall be set forth below unless the context clearly indicates otherwise:

(1) "Applicant" means a person who has submitted an application to take an examination for certification.

(2) "Board" means the Kentucky Board of Certification of Wastewater System Operators.

(3) "Cabinet" has the meaning given in KRS 224.01-010.

(4) "Certificate" means a certificate of competency issued by the cabinet stating that the operator has met the requirements for the specified operator classification set by this chapter.

(5) "Certified operator" means an individual who holds an active certificate.

(6) "Core content" means the information identified as essential by the board for purposes of certification examination and continuing education training.

(7) "Operator" means any person involved in the operation of a wastewater treatment plant or collection system.

(8) "Primary responsibility" means the authority to conduct procedures and practices necessary to ensure that the wastewater treatment plant or collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-0720, email Julia.Kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the definitions applicable to the certification of operators.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify terms used in regulations related to the certification of operators.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.10-110 and 224.73-110 which authorize the cabinet to implement a certification program for wastewater system operators.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clear definitions for terms applicable to wastewater system operators.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified wastewater treatment plant operators will be affected by this new administrative regulation. There are approximately 1600 operators currently certified by the program. Small or local governments that operate wastewater treatment plants or collection systems will be indirectly affected by this new 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: Certified operators do not need to take any action in response to this administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Under this administrative regulation, individuals should not expect to experience any additional cost.

As a result of compliance, what benefits will accrue to the entities identified in question (3): Because certified operators are affected by the definitions, they may experience benefits as a result of having a clear understanding of the terms applicable to their certification.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initial: 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: Implementation of this administrative regulation is funded through agency receipts and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be required to implement this administrative regulation.
regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees; This administrative regulation will not directly or indirectly establish any fees.
(9) TIERING: Is tiering applied? This administrative regulation clarifies the definitions applicable to the certification of operators. Tiering is 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? This regulation relates to state or local governments that operate wastewater treatment plants or collection systems.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, and 224.73-110.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. (a) How much revenue will this administrative regulation generate? This administrative regulation will not generate additional state or local government revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
(c) How much will it cost to administer this program for the first year? No additional cost is expected.
(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.
注: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

ENERGY AND ENVIRONMENT CABINET
Division of Compliance Assistance
(New Administrative Regulation)

401 KAR 11:010. Board of Certification.

RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of operators. This administrative regulation establishes the duties of the Kentucky Board of Certification of Wastewater System Operators.

Section 1. Duties of the Board. The board shall:
(1) Evaluate the qualifications of applicants and recommend qualified applicants to the cabinet for certification examination;
(2) Review and provide comments to the cabinet on proposed administrative regulations regarding operator certification;
(3) Review and make recommendations to the cabinet on core content for certification examinations and continuing education training for certification renewal;
(4) Review and make recommendations to the cabinet on training proposed to provide continuing education to certified operators. When evaluating training courses and seminars, the board shall consider:
(a) The consistency of training material with the core content;
(b) The ability of the training to provide information that supports effective water conveyance, treatment, and quality; and
(c) The ability of the instructor to properly present the training;
(5) Assist the cabinet in drafting examinations for the certification of operators;
(6) Review and provide comments to the cabinet on proposed fees for the training and certification of operators;
(7) Review applications for reciprocity and recommend to the cabinet the acceptance or denial of the application; and
(7) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with KRS Chapter 224, 401 KAR Chapter 5, or this chapter.

HANK LUST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at the hearing shall notify this agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatsley, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the duties of the Kentucky Board of Certification of Wastewater System Operators.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the duties of the board and the criteria for approving continuing education courses for purposes of certification renewal.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for wastewater system operators. This administrative regulation establishes standards for the duties of the Kentucky Board of Certification of Wastewater System Operators, which is responsible for providing input to the cabinet on the implementation of the certification program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the board to effectively conduct their duties as mandated by KRS 224.73-110.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the autho-
rizing statutes:

(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: Certified wastewater treatment plant operators will be indirectly affected by this new administrative regulation. There are approximately 1,600 operators currently certified by the program. Operators may be indirectly affected because the board makes recommendations to the cabinet related to the implementation of the certification program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by 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: Certified operators will not be directly affected by this administrative regulation. Certified operators do not need to take any action in response to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this administrative regulation, individuals should not expect to experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because certified operators are indirectly affected by board recommendations made to the cabinet regarding the implementation of the certification program, they may experience benefits as a result of the board having a clear understanding of their duties and the criteria they shall apply in the performance of their duties.

(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: Implementation of this administrative regulation is funded through agency receipts and general fund 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: No additional fees or funding will be required 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 will not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not): This administrative regulation clarifies the duties of the board and the criteria for approving continuing education courses for purposes of certification renewal. Tiering is 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? This regulation relates to state or local governments that operate wastewater treatment plants or collection systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 224.10-100, 224.10-110, 224.73-110.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation clarifies the duties of the board and the criteria for approving continuing education courses for purposes of certification renewal. No fiscal impacts are anticipated.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(New Administrative Regulation)

401 KAR 11:020. Standards of professional conduct for certified operators.

RELATES TO: KRS 224.10-110, 224.73-110

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of operators. This administrative regulation establishes standards for the performance of certified operator duties.

Section 1. Standards of Professional Conduct. (1) In order to safeguard the life, health, and welfare of the public and the environment and to establish and maintain a high standard of integrity in the certified operator profession, the following standards of professional conduct apply to persons certified in accordance with this chapter.

(a) A certified operator shall, during the performance of operational duties, protect the safety, health, and welfare of the public and the environment and to establish and maintain a high standard of integrity in the certified operator profession, the following standards of professional conduct apply to persons certified in accordance with this chapter.

(b) A certified operator shall use reasonable care and judgment in the performance of operational duties;

(c) If a certified operator's judgment is overruled by an employer under circumstances where the safety, health, and welfare of the public or the environment are endangered, the certified operator shall inform the employer of the possible consequences;

(d) A certified operator shall be objective, truthful, and complete in applications, reports, statements, or testimony provided to the cabinet; and

(e) A certified operator shall ensure the integrity of sample collection, preparation, and analysis so that results are a true representation of water quality.

(2) Proof of certification. While on duty, a certified operator shall carry in their possession the operator's current certification status.

(3) Maintenance of records. If information related to the operator's employment or mailing address changes, the operator shall provide written notification to the cabinet within thirty (30) days.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LFC: July 14, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
VOLUME 35, NUMBER 2 - AUGUST 1, 2008

August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keating, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the performance of certified operator duties.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to safeguard the life, health, and welfare of the public and the environment and to establish a high standard of integrity in the certified operator profession.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for wastewater system operators.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the duties of an operator as mandated by KRS 224.73-110.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes: 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: Certified wastewater treatment plant and collection system operators will be affected by this new administrative regulation. There are approximately 1,000 operators currently certified by the program. State or local governments that operate wastewater treatment plants or collection systems will be indirectly affected by this new 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: Certified operators as well as state and local governments will refer to this new administrative regulation to gain a clear understanding of the standard of integrity in the certified operator profession. This will help the operator comply with agency standards related to the proper operation of a wastewater system.
(b) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(i) Initially: No additional costs are anticipated.
(ii) On a continuing basis: No additional costs are anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this new administrative regulation is funded through agency and 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 fees or funding will be required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not directly or indirectly establish any fees.
(9) TIERING: Is being applied? This new administrative regulation establishes standards for the performance of certified operator duties. Tiering is 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? This new administrative regulation relates to state or local governments that operate wastewater treatment plants or collections systems.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.73-110.
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 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 new administrative regulation will not generate additional state or local government revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.
(d) How much will it cost to administer this program for subsequent years? No additional cost 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: This new administrative regulation establishes standards for the performance of certified operator duties. No fiscal impacts are anticipated.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(New Administrative Regulation)

401 KAR 11:030, Wastewater treatment and collection operators - classification and qualification.
VOLUME 35, NUMBER 2 – AUGUST 1, 2008

RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of operators. This administrative regulation establishes classification of wastewater treatment and collection operator certifications and establishes the qualifications for certification.

Section 1. Classification of Wastewater Operator Certifications.
(1) Wastewater treatment certifications.
   (a) Limited certification. As provided in KRS 224.73-110(5), an operator issued a limited certificate may have primary responsibility for a school wastewater treatment plant and collection system.
   (b) Class I Treatment certification. A Class I treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day. A Class I Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.
   (c) Class II Treatment certification with an Operator in Training designation. A Class II Treatment operator with an Operator in Training designation may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day. A Class II Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.
   (d) Class III Treatment certification. A Class III Treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day. A Class III Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.
   (f) Class IV Treatment certification. A Class IV Treatment operator may have primary responsibility for a wastewater treatment plant with any design capacity.

(2) Wastewater collection certifications.
   (a) Class I Collection certification.
      1. A Class I Collection operator may have primary responsibility for a wastewater collection system serving a population of less than or equal to 1,500 Individuals. A Class I Collection operator shall not have primary responsibility for a wastewater collection system with a larger design capacity.
      2. Class I Collection certification with an Operator in Training designation. A Class I Collection operator with an Operator in Training designation may have primary responsibility for a wastewater collection system serving a population of less than or equal to 1,500 Individuals. A Class I Collection operator with an Operator in Training designation shall not have primary responsibility for a wastewater collection system with a larger design capacity.
   (b) Class II Collection certification. A Class II Collection operator may have primary responsibility for a wastewater collection system serving a population of less than or equal to 15,000 individuals. A Class II Collection operator shall not have primary responsibility for a wastewater collection system with a larger design capacity.
   (c) Class III Collection certification. A Class III Collection operator may have primary responsibility for a wastewater collection system serving a population of less than or equal to 50,000 individuals. A Class III Collection operator shall not have primary responsibility for a wastewater collection system with a larger design capacity.
   (d) Class IV Collection certification. A Class IV Collection operator may have primary responsibility for a wastewater collection system of any design capacity.

Section 2. Wastewater Operator Qualifications: Experience, Education, and Equivalencies. An individual desiring to become a certified operator shall meet the following minimum qualifications prior to the cabinet approving the individual to take a certification examination as provided in 401 KAR 11:040.
(1) The education and experience requirement for each class of wastewater treatment certifications is as follows:
   (a) Limited certification.
      1. Education. No minimum level of education is required.
      2. Experience. No minimum level of experience is required.
   (b) Class I Treatment certification.
      1. Education. High school diploma or general education development (GED) certificate; and
      2. Experience. One (1) year of acceptable operation of a wastewater treatment plant.
   (c) Class II Treatment certification with an Operator in Training designation.
      1. Education. High school diploma or general education development (GED) certificate; and
      2. Experience. Two (2) years of acceptable operation of a wastewater treatment plant.
   (d) Class III Treatment certification.
      1. Education. High school diploma or general education development (GED) certificate; and
      2. Experience. Three (3) years of acceptable operation of a wastewater treatment plant.
   (e) Class IV Treatment certification.
      1. Education. A baccalaureate degree in engineering, allied sciences or equivalent; and
      2. Experience. At least five (5) years of acceptable operation of a wastewater treatment plant.
   (f) Class I Collection certification.
      1. Education. High school diploma or general education development (GED) certificate; and
      2. Experience. Two (2) years of acceptable operation of a wastewater collection system.
   (g) Class II Collection certification.
      1. Education. High school diploma or general education development (GED) certificate; and
      2. Experience. Three (3) years of acceptable operation of a wastewater collection system.
   (h) Class III Collection certification.
      1. Education. High school diploma or general education development (GED) certificate; and
      2. Experience. Four (4) years of acceptable operation of a wastewater collection system.
   (i) Class IV Collection certification.
      1. Education. A baccalaureate degree in engineering, allied sciences or equivalent; and
      2. Experience. At least five (5) years of acceptable operation of a wastewater collection system.

(3) Substitutions. The cabinet may allow the following substitutions for the qualifications specified in subsections (1) and (2) of this section:
(a) Education may be substituted for up to fifty (50) percent of the experience requirement as follows:
1. An associate degree may substitute for two (2) years of experience.
2. A bachelor degree may substitute for four (4) years of experience.
3. Education in environmental engineering, environmental technology, and biological, physical, or chemical sciences that did not result in a degree in a related field may be substituted for the required experience as follows:
   a. Ten (10) contact hours, one (1) CEU, or one (1) post-secondary education quarter hour with a passing grade may substitute for 0.022 years of experience
   b. One (1) post-secondary education semester hour with a passing grade may substitute for 0.033 years of experience
4. Education applied to the experience requirements specified in subsections (1) and (2) of this section shall not be applied to the education requirement.
(b) Experience may be substituted for the educational requirement as follows:
1. One (1) year of operational experience at a treatment plant may substitute for one (1) year of education.
2. Four (4) years of collection system experience may substitute for one (1) year of experience.
3. The cabinet may allow partial substitution of the education requirement by experience in maintenance, laboratory analysis or other work related to the collection, treatment or distribution of drinking water or wastewater. To establish how much experience will be accepted, the cabinet shall determine the degree of technical knowledge needed to perform the work and the degree of responsibility the applicant had in the operation of the system.
4. Experience applied to the education requirement specified in subsections (1) and (2) of this section shall not be applied to the experience requirement.
(c) Collection system and treatment experience may be substituted as follows:
1. One (1) year of collection system experience may be considered equivalent to one (1) year of treatment experience. However, this substitution may not account for more than fifty (50) percent of the experience required by subsection (1) of this section.
2. One (1) year of treatment experience may be considered equivalent to one (1) year of collection system experience.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Aaron Keatley, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the classification and qualifications of certified operators.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum qualifications for an individual before they can take a certification examination. It also defines the experience that may be used to meet the minimum qualifications for certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for wastewater system operators. This administrative regulation establishes standards for classification and qualification of certified operators.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the minimum qualifications for certification and establishes certification classifications as mandated by KRS 224.73-110.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes: 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: Certified wastewater treatment plant and collection system operators will be affected by this new administrative regulation. There are approximately 1,500 operators currently certified by the program. State or local governments that operate wastewater treatment plants or collections systems will be indirectly affected by this new 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: Certified operators, state and local governments, will refer to this new administrative regulation to determine the necessary education and experience requirements for each wastewater and collection system classification.
(b) In complying with this administrative regulation or amendment, how much will each of the entities identified in question (3): Under this new administrative regulation, individuals should not expect to experience any additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators, state and local governments, will gain a clear understanding of the classification and qualification requirements and as a result understand what experience and education must be obtained prior to becoming certified.
(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: Implementation of this new administrative regulation is funded through agency and general funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be required 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 will not directly or indirectly establish any fees.
(9) TIERING: Is being applied? Yes, being is applied. Differ-
ent operator classifications require varying levels of education and experience for certification. These requirements are tiered based on the size of the treatment and collection processes.

**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 new administrative regulation relates to state or local governments that operate wastewater treatment plants or collections systems.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.73-110.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
   a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate additional state or local government revenue.
   b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
   c. How much will it cost to administer this program for the first year? No additional cost is anticipated.
   d. How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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

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

   Other Explanation: This new administrative regulation clarifies the classification and qualifications for certified operators. No fiscal impacts are anticipated.

**ENERGY AND ENVIRONMENT CABINET**

Department for Environmental Protection
Division of Compliance Assurance
(New Administrative Regulation)


RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of operators. This administrative regulation establishes application and examination procedures; provisions relating to certificate issuance, renewal, and termination; reciprocity; training; and disciplinary actions.

Section 1. Application and Examination for Certification. (1) An individual desiring to become a certified operator shall first meet the qualifications specified in 401 KAR 11:030 and then pass an examination administered by the cabinet.
(2) An applicant for certification shall complete the “Registration Form for Exams and Training” and “Education and Experience Documentation Form”, which are incorporated by reference in Section 5 of this administrative regulation, and shall submit them and the application fee to the cabinet. An application shall not be submitted to the cabinet unless the applicant has met the qualifications for examination.
(3) After receipt of the completed forms and the application fee, the cabinet, considering the recommendation of the board, shall determine if the applicant meets the qualifications specified in 401 KAR 11:030. If the applicant meets the qualifications, the cabinet shall approve the application and notify the applicant of the scheduled exam date.
(4) Upon the applicant’s completion of the examination, the cabinet shall notify the applicant of their examination score. A score of at least seventy (70) percent is required to pass the examination.
(5) The cabinet shall issue a certificate and wallet card to applicants who successfully pass the certification examination. The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.
(6) An applicant who fails to pass an examination may apply to take the examination again by resubmitting the “Registration Form for Exams and Training” and the application fee to the cabinet.
(7) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet. A request for a review shall be submitted to the cabinet in writing.
(8) A certificate may be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the United States if:
   a. The requirements for certification under which the certificate was issued are no less stringent than the requirements for certification set forth in KRS Chapter 224.73-110 and this Chapter;
   b. The applicant submits an “Application for Reciprocity” form and the reciprocity fee to the cabinet.

Section 2. Duration of Certification. (1) Certifications shall expire on June 30 of odd-numbered years unless suspended, revoked, or replaced by a higher classification certificate before that date.
(2) An expired certification shall continue in force pending the administrative processing of a renewal if the certified operator has complied with the renewal requirements of Section 3 of this administrative regulation. A certification continued under this paragraph shall remain fully effective and enforceable.
(3) A certification shall terminate if not renewed on or before December 31 of the year the certification expired.

Section 3. Continuing Education and Certification Renewal. (1) A certified operator who is not designated an Operator in Training may renew a certification without examination provided the operator has:
   a. Accumulated the training hours required in subsection (5) of this section; and
   b. Submitted a completed “Application for Certification Renewal” form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet’s Web site.
(2) A certified operator who is designated an Operator in Training may renew a certification without examination if the operator has satisfied the requirements of subsection (1)(a) and (b) of this section and has acquired one (1) year of acceptable experience prior to expiration of the certification. Upon renewal, the operator will no longer be designated an Operator in Training.
(3) If the “Application for Certification Renewal” form, which is incorporated by reference in Section 5 of this administrative regulation, and the renewal fee are not received by the cabinet or submitted electronically by June 30 of the year the certification expires, a late renewal fee shall be paid.
(4) A terminated certification shall not be renewed. An operator whose certification is terminated and who wishes to become reCertified shall reapply for and pass an examination in accordance with Section 1 of this administrative regulation.
(5) Prior to applying for certification renewal, a certified operator shall complete the required number of cabinet-approved training hours. Hours earned prior to certification shall not count toward certification renewal. Training hours shall expire two (2) years from the date earned.
(a) Certified operators with a Limited, Class I or II Treatment or Class I or II Collection certification shall complete twelve (12) hours of approved training; and
(b) Certified operators with a Class III or IV Treatment or Class III or IV Collection certification shall complete twenty-four (24) hours of approved training.

(5) A training provider seeking approval of certified operator training shall submit to the cabinet a completed "Application for Approval of Courses for Continuing Education Credit", which is incorporated by reference in Section 5 of this administrative regulation.

(7) Upon completion of the approved training, the provider shall submit to the cabinet a completed "Continuing Education Activity Report" form, which is incorporated by reference in Section 5 of this administrative regulation.

(8) A certified operator who has attended training that has not been submitted to the cabinet for approval may apply for training approval as provided in subsection (6) of this section.

(9) A certified operator who provides approved training may receive, upon approval of the cabinet, hour-for-hour credit for actual instruction time.

(10) Cabinet approval of training shall expire two years following the date of approval. The cabinet, in consultation with the board, may extend the approval expiration date if the provider requests the extension in writing.

Section 4. Disciplinary Action. (1) A certified operator shall be subject to disciplinary action if the cabinet, in consultation with the board, determines that the certified operator has not satisfactorily performed their duties in accordance with 401 KAR 11:020.

(2) A written complaint received by the board or cabinet regarding a certified operator, unless duplicative or frivolous, and violations of 401 KAR 11:020 that are identified by the cabinet shall be evaluated by the board. If the complaint or violation warrants further investigation, the certified operator may be requested to appear before the board.

(3) The board shall make a recommendation to the cabinet regarding disciplinary action. The board may recommend that no disciplinary action be taken or recommend that a disciplinary action be taken.

(4) Upon receiving a recommendation from the board, the cabinet shall review the available evidence. After completing the review, the cabinet will initiate the recommended disciplinary action or notify the board as to why an alternative disciplinary action was taken.

(5) A disciplinary action shall be commensurate with the severity, duration, and number of the violations. Disciplinary actions may include, but are not limited to:

   (a) Probation for a specified period of time, not to exceed one year;

   (b) Suspension of the operator's certification for a specified period of time, not to exceed four (4) years, during which the certification shall be considered void;

   (c) Revocation of the operator's certification;

   (d) Civil or criminal penalties.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and his employer by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply.

(7) A certified operator whose certification has been suspended shall not have primary responsibility during the period that the suspension remains in effect. Experience gained during a suspension shall not be included toward meeting the requirements of 401 KAR 11:030.

(8) If a certification is revoked, the operator shall be ineligible for future certification.

(9) Any action taken by the cabinet pursuant to this section shall not preclude the cabinet from pursuing additional civil or criminal action.

(10) A certified operator who considers himself aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference.

(a) "Registration Form for Exams and Training", May 2008;

(b) "Education and Experience Documentation Form", May 2008;

(c) "Application for Certification Renewal", May 2008;

(d) "Application for Approval of Courses for Continuing Education Credit", May 2008;

(e) "Continuing Education Activity Report", May 2008; and

(f) "Application for Reciprocity", May 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. 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: Julia Kayes, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-0720, email Julia.Kayes@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes standards for certification application and examination procedures; issuance and renewals of certificates; and defines the process for taking disciplinary actions against noncompliant operators.

   (b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the provisions necessary for the certification of operators.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for wastewater system operators. This administrative regulation establishes standards for application and examination procedures; issuance and renewals of certificates for the certification of operators; and defines the process for taking disciplinary actions against noncompliant operators.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the certification application and examination procedures, issuance and renewals of certificates and disciplinary actions as mandated by KRS 224.73-110.

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

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

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

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

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

   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administr-
tive regulation: Certified wastewater treatment plant and collection system operators, as well as operators seeking certification, will be affected by this new administrative regulation. There are approximately 1,600 operators currently certified by the program. State or local governments that operate wastewater treatment plants or collection systems will be indirectly affected by this new 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: Certified operators, state and local governments, as well as operators seeking certification, will refer to this new administrative regulation to determine the necessary procedures for obtaining and maintaining their certification.

(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Certified operators, state and local governments, will refer to this new administrative regulation to gain a clear understanding of the necessary procedures for obtaining and maintaining their certification. Individuals that become certified are authorized to operate a wastewater system as provided in KRS 224.73-110.

(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? Implementation of this new administrative regulation is funded through agency and general funds.

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

(9) TIERING: Is tiering applied? This new administrative regulation clarifies the procedures necessary for obtaining and maintaining certification. Tiering is applied consistent with the various certification levels that are tiered based on the size of the wastewater treatment and collection 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? This new administrative regulation relates to state or local governments that operate wastewater treatment plants or collection systems.

3. Identify each state or federal statute or federal regulation that this administrative regulation supersedes or is based on: KRS 224.10-100, 224.10-110, 224.73-110.

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

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

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

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

(1) How much will it cost to administer this program for subsequent years? No additional cost 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: This new administrative regulation clarifies the procedures necessary for obtaining and maintaining certification. No fiscal impacts are anticipated.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(New Administrative Regulation)


RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of operators. This administrative regulation establishes a fee schedule for operator certification and for training of operators that is provided by the cabinet.

Section 1. Fees. (1) Fees for certification of operators shall not exceed the following:

(a) Certification application fee: $100.

(b) Renewal application fee:
1. Fifty (50) dollars if renewed through the cabinet website.
2. $100 if not renewed through the cabinet website.

(c) Renewal late fee: $25.00.

(d) Reciprocity fee: $50.00.

(2) Each year the cabinet, in consultation with the board, shall set fees for operator training conducted by the cabinet.

(3) The fees in subsection (1) of this section of this administrative regulation are nonrefundable. Fifty (50) percent of the fees in subsection (2) of this section are refundable if registration is canceled at least two (2) business days prior to the beginning of the training event.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2008 at 6:30 p.m. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 2, 2008. Send written notification of intent to be heard at the public hearing or written
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comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 500 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-5725, email Julia.Kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a fee schedule for operator certification.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a fee structure the certification of operators. Fees received by the certification program are used to pay for the administrative costs of the program and to fund training opportunities for prospective and existing certified operators.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for wastewater system operators. This administrative regulation establishes a fee schedule for operator certification.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the fee schedule as mandated by KRS 224.73-110.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation;
(b) The necessity of the amendment to this administrative regulation;
(c) How the amendment conforms to the content of the authorizing statutes;
(d) How the amendment will assist in the effective administration of the statutes: 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: Certified wastewater treatment plant and collection system operators, as well as operators seeking certification, will be affected by this new administrative regulation. There are approximately 1,600 operators currently certified by the program. State or local governments that operate wastewater treatment plants or collection systems will be affected by this new administrative regulation if they voluntarily pay for the certification fees of their employees.
(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: Certified operators, state and local governments, as well as operators seeking certification, will refer to this new administrative regulation to determine the necessary fees for obtaining and maintaining their certification.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Under this new administrative regulation, individuals should expect to experience the following cost:
   a. Certification fee - $100
   b. Renewal application fee - fifty (50) dollars if renewed electronically; $100 if not renewed electronically
   c. Renewal late fee - $250
   d. Reciprocity fee - $500
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators, state and local governments, will refer to this new administrative regulation to gain a clear understanding of the necessary fees for obtaining and maintaining their certification.
(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: Implementation of this new administrative regulation is funded through agency and general funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This new administrative regulation establishes the fees associated with operator certification. This fee is necessary in order to effectively implement the program and to continue to provide the certification program's existing services.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation will directly establish a fee schedule.
(9) TIERING. Is being applied? This new administrative regulation clarifies the fees associated for obtaining and maintaining certification. A certification application fee is set at a flat rate of $100 for all applicants and is a one-time fee for each initial certification. Renewal fees are required every two years and are tiered based on the timeliness of the renewal application submittal. If the renewal application is received on time, the fee is fifty (50) dollars if renewed electronically or $100 if not renewed electronically. If the renewal application is received after June 30 of the renewal year, a late fee will be assessed in the amount of $250. Certified operators from other states may apply for a Kentucky certification through reciprocity. The reciprocity fee is $500. Individuals can avoid the reciprocity fee by qualifying for and passing the certification exam.

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 counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including counties, fire departments, or school districts) will be impacted by this administrative regulation? This new administrative regulation relates to state or local governments that operate wastewater treatment plants or collection systems.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.73-110.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year of the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate additional state or local government revenue.
   (b) How much revenue will this administrative regulation generate for the state or local government (including counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
   (c) How much will it cost to administer this program for the first year? No additional cost is anticipated to state or local governments. Local governments that operate wastewater systems will experience a cost if they voluntarily pay for the certification fees of their employees.
   (d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.
   Notes: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): These fees will increase revenues for the state. The revenues received by the certification program will be used to pay for the administrative costs of the program and to fund training opportunities for prospective and existing certified operators. It is not possible to accurately predict the revenues that will be
generated from this regulation because the agency is unable to determine the number of individuals that will seek to obtain a collection system license.

Expenditures (+/-): This new administrative regulation relates to state or local governments that operate wastewater treatment plants or collections systems. Wastewater systems are already required to have properly certified operators. These entities would experience an increase in expenditures based upon the fee schedule listed below:

1. Certification fee - $100
2. Renewal application fee - $50 if renewed electronically; $100 if not renewed electronically
3. Renewal late fee - $250

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation. State compliance standards.
2. There is no federal mandate for this administrative regulation. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.
3. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for this administrative regulation.
4. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for this administrative regulation.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 7:130. Approval of Innovative Alternative School Calendars.

STATUTORY AUTHORITY: 2008 Ky Acts ch., Part I, D, 4, (14) NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky Acts ch., Part I, D, 4, (14) requires the Kentucky Board of Education to establish, by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars.

Section 1. (1) A local board of education may request approval of an innovative alternative school calendar for the 2008-2009 school year or the 2009-2010 school year by submitting a written request to the Commissioner of Education.

(2) The request shall be signed by the superintendent and board of education chairperson, contain a specific explanation of the reason for the request, and shall include the following information:

(a) How the alternative calendar will improve teaching and learning in the district;
(b) How 1,082 hours of instruction will be included in the calendar;
(c) The structure of any instructional days that are less than six-hours in length; and
(d) A description of how the alternative calendar will provide for professional learning situations designed to improve instructional practices that will enhance student learning.

Section 2. A request for approval of an innovative alternative school calendar shall be submitted to the Commissioner of Education no later than June 30 preceding the school year for which the request is submitted.

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).

JON E. DRAUD, Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 16, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 28, 2008 at 2 p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing 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 September 2, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to 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) 584-4474, fax (502) 584-9321.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 584-4474, fax (502) 584-9321.

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 allows the Kentucky Department of Education to immediately provide technical assistance and approval of school calendars to local school districts prior to the beginning of the 2008-09 school year, consistent with the intent of HB 406.
(b) The necessity of this administrative regulation: This emergency administrative regulation was necessary to implement the provisions of 2008 HB 405/EN, Part I, D, 4(14) to enable the Kentucky Department of Education to immediately provide technical assistance and approval of school calendars to local school districts prior to the beginning of the 2008-09 school year.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the required process and guidelines to allow the Commissioner of Education to approve alternative, innovative school calendars prior to the beginning of the 2008-09 school year.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The emergency regulation provides the required process and guidelines for local school districts to apply for and receive approval of innovative, alternative school calendars effective for the 2008-2009 school year.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statute: N/A
(d) How the amendment will assist in the effective administration of the statute: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, school boards and staff in the
Kentucky Department of Education, Office of District Support 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: The local school districts that submit an application for funding and receive approval for an alternative, innovative school calendar option. KDE staff will provide technical assistance to districts and implement the application and approval process.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A local school district choosing to participate will need to: Apply to the Kentucky Department of Education, Office of District Support Services for approval. Provide appropriate information on the application. Provide additional information if needed to ensure approval. Receive final approval of an innovative, alternative school calendar from the Commissioner of Education.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have additional governance flexibility in determining their school calendars and the Kentucky Department of Education will have additional latitude to approve innovative, alternative options.

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

(a) Initially: There is no cost to implement.

(b) On a continuing basis: There is no 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: N/A

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

(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 directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering does not apply because the process applies equally to all school districts which choose to apply.

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 that choose to apply.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2008 Ky Acts ch. Part I, D.4(14)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? There is no cost.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:925. Diagnosis-related group (DRG) Inpatient hospital reimbursement.


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes the method for determining the amount payable via a diagnosis-related group methodology by the Medicaid Program for a hospital inpatient service including provisions necessary to enhance reimbursement pursuant to KRS 142.303, 205.630, and 2006 Ky Acts ch. 252.

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

(2) "Adjustment factor" means the factor by which non-neonatal care relative weights shall be reduced to offset the expenditure pool adjustment necessary to enhance neonatal care relative weights.

(3) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(4) "Base rate" means the per discharge hospital-specific DRG rate for an acute care hospital that is multiplied by the relative weight to calculate the DRG base payment.

(5) "Base year" means the state fiscal year period used to establish DRG rates.

(6) "Base year Medicare rate components" means Medicare Inpatient prospective payment system rate components in effect on October 1 during the base year as listed in the CMS IPPS Pricer Program.

(7) "Budget neutrality" means that reimbursements resulting from rates paid to providers under a per discharge methodology do not exceed payments in the base year adjusted for inflation based on the CMS Input Price Index or changes in patient utilization.

(8) "Budget neutrality factor" means a factor that is applied to a DRG base rate or the direct graduate medical educational payment so that budget neutrality is achieved.

(9) "Capitation cost" means capital related expenses including insurance, taxes, interest and depreciation related to plant and equipment.

(10) "CMS" means the Centers for Medicare and Medicaid Services.

(11) "CMS IPPS Pricer Program" means the software program published on the CMS website of http://www.cms.hhs.gov which shows the Medicare rate components and payment rates under the Medicare Inpatient prospective payment system for a discharge within a given federal fiscal year.

(12) "Cost center specific cost-to-charge ratio" means a ratio of a hospital's cost center specific total hospital costs to its cost center specific total charges.

(13) "Cost outlier" means a claim for which estimated cost
exceeds the outlier threshold. 

(14) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1.110 and is designated as a critical access hospital by the department.

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

(16) "Diagnostic categories" means the diagnostic classifications containing one or more DRGs used by Medicare programs, assigned in the base year with modifications established in Section 215 of this administrative regulation.

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

(18) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(19) "DRG average length of stay" means the Kentucky arithmetic mean length of stay for each DRG, calculated by dividing the sum of patient days in the base year claims data for each DRG by the number of discharges for each DRG.

(20) "DRG base payment" means the base payment for claims paid under the DRG methodology.

(21) "Enhanced neonatal care relative weight" means a neonatal care relative weight increased, with a corresponding reduction to non-neonatal care relative weights, to facilitate reimbursing neonatal care at an appropriate level of costs in aggregate by category.

(22) "Federal financial participation" means funding from the Centers for Medicare and Medicaid Services.

(23) "Fixed loss cost threshold" means the amount, equal to $29,000, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(24) "Geometric mean" means the measure of central tendency of a set of values expressed as the nth (number of values in the set) root of their product.

(25) "GH" means Global Insight, Incorporated.

(26) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(27) "High intensity level II neonatal center" means an in-state hospital with a level II neonatal center which:

(a) is licensed for a minimum of twenty-four (24) neonatal level II beds;

(b) has a minimum of 1,500 Medicaid neonatal level II patient days per year;

(c) has a gestational age lower limit of twenty-seven (27) weeks; and

(d) has a full-time perinatologist on staff.

(28) "High volume per diem payment" means a per diem add-on payment made to hospitals meeting selected Medicaid utilization criteria established in Section 212 of this administrative regulation.

(29) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(30) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(31) "Intrafacility transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.

(32) "Level I neonatal center" means a facility with a licensed level I bed which provides care to newborn infants of a more intensive nature than the usual nursing care provided in newborn acute care units, on the basis of physicians' orders and approved nursing care plans.

(33) "Level II neonatal center" means a facility with a licensed level II bed which provides specialty care for infants which includes monitoring for specific health care outcomes, including assistance to maintain the infant's body temperature, and feeding assistance.

(34) "Level III neonatal center" means a facility with a licensed level III bed which provides specialty care of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.

(35) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(36) "Low intensity level III neonatal center" means a facility with fewer than four (4) licensed level III neonatal beds.

(37) "Medicaid shortfall" means the difference between a provider's cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(38) "Medical education costs" means direct costs that are:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(39) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3.130.

(40) "Outlier threshold" means the sum of the DRG base payment, transfer payment and the fixed loss cost threshold.

(41) "Pediatric teaching hospital" is defined in KRS 205.556(1).

(42) "Per diem rate" means the per diem rate paid by the department for inpatient care in an in-state psychiatric or rehabilitation hospital, inpatient care in a long-term acute care hospital, inpatient care in a critical access hospital or psychiatric or rehabilitation services in an in-state acute care hospital which has a distinct part unit.

(43) "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20.180.

(44) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(45) "Rebase" means to recalculate base rates, per diem rates, and other applicable components of the payment rates using more recent data.

(46) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20.240.

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

(48) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(49) "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(C).

(50) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(51) "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

(52) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year and the beginning of the universal rate year.

(53) "Type III hospital" means an in-state disproportionate share university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(54) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(55) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(i).

(56) "Urban trauma center hospital" means an acute care hospital that:

(a) is designated as a Level I Trauma Center by the American
College of Surgeons;
(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and
(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1) An in-state acute care hospital shall be paid for an inpatient acute care service on a fully-prospective per discharge basis.

(2) For an inpatient acute care service in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:
(a) A DRG base payment;
(b) If applicable, a high volume per diem payment; and
(c) If applicable, a cost outlier payment amount.

(3) A DRG shall be based on the Medicare grouper in effect in the Medicare inpatient prospective payment system at the time of reimbursement.

(b) For a rate effective upon the effective date of this administrative regulation, the department shall assign to the base year claims data, DRG classifications from Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.

(4) A DRG base payment shall be calculated for a discharge by multiplying the hospital specific base rate by the DRG relative weight.

(5) The department shall determine a base rate by calculating a case mix, outlier payment and budget neutrality adjusted cost per discharge for each in-state acute care hospital as described in subsections (4) through (10) of this section of this administrative regulation.

(b) A hospital specific cost per discharge used to calculate a base rate shall be based on base year inpatient paid claims data.

(c) For a rate effective upon the effective date of this administrative regulation, a hospital specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data.

(6) The department shall calculate a cost to charge ratio for the fifteen (15) Medicaid and Medicare cost centers displayed in paragraph (b) of this subsection.

(b) If a hospital lacks cost-to-charge information for a given cost center or if the hospital’s cost-to-charge ratio is above or below three (3) standard deviations from the mean of a log distribution of cost-to-charge ratios, the department shall use the statewide geometric mean cost-to-charge ratio for the given cost center.

Medicare cost report, the department shall calculate allocated overhead by computing the difference between the costs of interns and residents before and after the allocation of overhead costs.

(b) The ratio of overhead costs for interns and residents to total facility costs shall be multiplied by the costs in each cost center prior to computing the cost center cost-to-charge ratio.

(6) For an in-state acute care hospital, the department shall compile the number of patient discharges, patient days and total charges from the base year claims data. The department shall exclude from the rate calculation:
(a) Claims paid under a managed care program;
(b) Claims for rehabilitation and psychiatric discharges reimbursed on a per diem basis;
(c) Transplant claims; and
(d) Revenue codes not covered by the Medicaid Program.

(7) The department shall calculate the cost of a base year claim by multiplying the charges from each accepted revenue code by the corresponding cost center specific cost-to-charge ratio.

(b) The department shall base cost center specific cost-to-charge ratios on data extracted from the most recently, as of June 1, finalized cost report.

(c) Only an inpatient revenue code recognized by the department shall be included in the calculation of estimated costs.

(10) Using the base year Medicaid claims referenced in subsection (9) of this section of this administrative regulation, the department shall compute a hospital specific cost per discharge by dividing a hospital’s Medicaid costs by its number of Medicaid discharges.

(11) The department shall determine an in-state acute care hospital’s DRG base payment rate by adjusting the hospital’s specific cost per discharge by the hospital’s case mix, expected outlier payments and budget neutrality.

(a) A hospital’s case mix adjusted cost per discharge shall be calculated by dividing the hospital’s cost per discharge by its case mix index; and

2. The hospital’s case mix index shall be equal to the average of its DRG relative weights for acute care services for base year Medicaid discharges referenced in subsection (8) of this section of this administrative regulation.

(c) A hospital’s case mix adjusted cost per discharge shall be multiplied by an initial budget neutrality factor.

2. The initial budget neutrality factor for a rate shall be 0.9962 for all hospitals.

3. When rates are rebased, the initial budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.

(c) Each hospital’s case mix and initial budget neutrality adjusted cost per discharge shall be multiplied by a hospital-specific outlier payment factor.

2. A hospital-specific outlier payment factor shall be the result of the following formula: (expected DRG non-outlier payments) - (expected proposed DRG outlier payments)/(expected DRG non-outlier payments).

(d) A hospital’s case mix, initial budget neutrality and outlier payment adjusted cost per discharge shall be multiplied by a secondary budget neutrality factor.

2. The secondary budget neutrality factor for a hospital shall be 1.0744.

3. When rates are rebased, the secondary budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.

(12) The department shall make a high volume per diem payment to an in-state acute care hospital with high Medicaid volume for base year Medicaid days referenced in subsection (9) of this section of this administrative regulation.

(b) High volume per diem criteria shall be based on the number of Kentucky Medicaid days or the hospital’s Kentucky Medicaid utilization percentage.

(c) A high volume per diem payment shall be made in the form of a per diem add-on amount in addition to the DRG base

| Table 1. Kentucky Medicaid Cost Center to Medicare Cost Report Cost Center Crosswalk |
|---------------------------------|-----------------|-----------------|-----------------|
| Kentucky Medicaid Cost Center   | Kentucky Medicaid Cost Center Description | Medicare Cost Report Standard Cost Center |
| 1                               | Routine Days    | 25              |
| 2                               | Intensive Days  | 29, 27, 29, 29, 30 |
| 3                               | Drugs           | 48, 66          |
| 4                               | Supplies or equipment | 55, 66, 67 |
| 5                               | Therapy services excluding inhalation therapy | 50, 51, 52 |
| 6                               | Inhalation therapy | 49              |
| 7                               | Operating room  | 37, 38          |
| 8                               | Labor and delivery | 39              |
| 9                               | Anesthesia      | 40              |
| 10                              | Cardiology      | 53, 54          |
| 11                              | Laboratory      | 44, 45          |
| 12                              | Radiology       | 41, 42          |
| 13                              | Other services  | 43, 46, 47, 57, 58, 59, 60, 61, 62, 63, 63 5, 64, 65, 68 |
| 14                              | Nursery         | 33              |
| 15                              | Neonatal intensive days | 30        |

(7) For a hospital with an intern or resident reported on its
payment rate encompassing the DRG average length-of-stay days per discharge.

2. The payment shall be equal to the applicable high volume per diem add-on amount multiplied by the DRG average length-of-stay associated with the claim's DRG classification.

(c)(1) The department shall determine a per diem payment associated with Medicaid days-based criteria separately from a per diem payment associated with Medicaid utilization-based criteria.

2. If a hospital qualifies for a high volume per diem payment under both the Medicaid days-based criteria and the Medicaid utilization-based criteria, the department shall pay the higher of the two add-on per diem amounts.

(e) The department shall pay the indicated high volume per diem payment if either the base year covered Kentucky Medicaid Inpatient days or Kentucky Medicaid Inpatient day's utilization percent meet the criteria established in Table 2 below.

<table>
<thead>
<tr>
<th>Kentucky Medicaid Inpatient Days</th>
<th>Kentucky Medicaid Inpatient Days Utilization</th>
<th>Per Diem Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days Range</td>
<td>Medicaid Utilization Range</td>
<td>Per Diem Payment</td>
</tr>
<tr>
<td>-3,499 days</td>
<td>0% - 13.2%</td>
<td>$0.00 per day</td>
</tr>
<tr>
<td>3,500 - 4,499 days</td>
<td>13.3% - 16.1%</td>
<td>$22.50 per day</td>
</tr>
<tr>
<td>4,500 - 7,399 days</td>
<td>16.2% - 21.6%</td>
<td>$45.00 per day</td>
</tr>
<tr>
<td>7,400 - 10,999 days</td>
<td>21.7% - 27.2%</td>
<td>$81.00 per day</td>
</tr>
<tr>
<td>11,000 - 19,999 days</td>
<td>27.3% - 100.00%</td>
<td>$92.75 per day</td>
</tr>
<tr>
<td>20,000 and above days</td>
<td></td>
<td>$306.00 per day</td>
</tr>
</tbody>
</table>

(f) The department shall use base year claims data referenced in subsection (8) of this section of this administrative regulation to determine if a hospital qualifies for a high volume per diem add-on payment.

(g) The department shall only change a hospital's classification regarding a high volume add-on payment or per diem amount during a re basing year.

(h)(a) The department shall make an additional cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each diagnostic category.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge, for purposes of comparing the discharge cost to the outlier threshold, by multiplying the sum of the hospital specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2. A Medicare operating or capital-related cost-to-charge ratio shall be extracted from the CMS IPPS Fancer Program.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2. The fixed loss cost threshold shall equal $29,000.

(f) A cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

14. The department shall calculate a Kentucky Medicaid-specific DRG relative weight by:

(a) Selecting Kentucky base year Medicaid inpatient paid claims, excluding those described in subsection (8) of this section of this administrative regulation; and

2. For a rate effective upon the effective date of this administrative regulation, a hospital-specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data.

15. Reassigning the DRG classification for the base year claims based on the Medicare DRG in effect in the Medicare Inpa-

16. The rate effective upon the effective date of this administrative regulation, the department shall assign to the base year claims data the Medicare grouper version 24 DRG classifications which were effective in the Medicare Inpatient prospective payment system as of October 1, 2006.

(c) Removing the following claims from the calculation:

1. Claims data for a discharge reimbursed on a per diem basis including:

   a. A psychiatric claim, defined as follows:

      (i) An acute care hospital claim with a psychiatric DRG;

      (ii) A psychiatric distinct part unit claim; and

   b. A rehabilitation claim, defined as follows:

      (i) An acute care hospital claim with rehabilitation DRG;

      (ii) A rehabilitation distinct part unit claim; and

   (iii) A rehabilitation hospital claim;

   c. A critical access hospital claim; and

   d. A long term acute care hospital claim;

   2. A transplant service claim as specified in subsection (19) of this section of this administrative regulation;

   3. A claim for a patient discharged from an out-of-state hospital; and

   4. A claim with total charges equal to zero (0);

(d) Calculating a relative weight value for a low volume DRG by

1. Arraying a DRG with less than twenty-five (25) cases in order by the Medicare DRG relative weight in effect in the Medicare Inpatient prospective payment system at the same time as the Medicare DRG grouper version, published in the Federal Register, relied upon for Kentucky DRG classifications, and

2. For a rate effective upon the effective date of this administrative regulation, the department shall use the Medicare DRG relative weight which was effective in the Medicare Inpatient prospective payment system as of October 1, 2006;

3. Grouping a low volume DRG, based on the Medicare DRG relative weight sort, into one (1) of five (5) categories resulting in each category having approximately the same number of Medicaid cases;

3. Calculating a DRG relative weight for each category; and

4. Assigning the relative weight calculated for a category to each DRG included in the category.

(e)1. Standardizing the labor portion of the cost of a claim for differences in wage and the full cost of a claim for differences in indirect medical education costs across hospitals based on base year Medicare rate components;

2. For a rate effective upon the effective date of this administrative regulation, base year Medicare rate components shall equal Medicare rate components effective in the Medicare Inpatient prospective payment system as of October 1, 2005; and

b. Base year Medicare rate components used in the Kentucky Inpatient prospective payment system include:

   i. Labor-related percentage and non-labor-related percentage;

   ii. Operating and capital cost-to-charge ratios;

   iii. Operating indirect medical education costs; or

   iv. Wage indices;

2. a. The department shall standardize costs using the following formula: standard cost = (([labor related percentage x costs] / Medicare wage index) + (non-labor related percentage x costs)) / (1 + Medicare operating indirect medical education factor); and

b. For a rate effective upon the effective date of this administrative regulation, the labor related percentage shall equal sixty-two (62) percent and the nonlabor related percentage shall equal eighty-eight (88) percent;

(i) Removing statistical outliers by deleting any case that is:

1. Above or below three (3) standard deviations from the mean cost per discharge; and

2. Above or below three (3) standard deviations from the mean cost per day;

(g) Computing an average standardized cost for all DRGs in aggregate and for each DRG, excluding statistical outliers;

(h) Computing DRG relative weights:

1. For a DRG with twenty-five (25) claims or more by dividing
the average cost per discharge for each DRG by the statewide average cost per discharge; and
2. For a DRG with less than twenty-five (25) claims by dividing the average cost per discharge for each of the five (5) low volume DRG categories by the statewide average cost per discharge;
(i) Employing enhanced neonatal care relative weights;
(ii) Excluding high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal care relative weight calculations.

15. The department shall:
(a) Separately reimburse for a mother's stay and a newborn's stay based on the diagnostic category assigned to the mother's stay and to the newborn's stay;
(b) Establish a unique set of diagnostic categories and relative weights for an in-state acute care hospital identified by the department as qualifying as a level I, II, or III neonatal center as follows:
1. The department shall exclude high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal center relative weight calculations;
2. The department shall reassess a claim that would have been assigned to a Medicare DRG 385-390 to a Kentucky-specific:
   a. DRG 675-680 for an in-state acute care hospital with a level II neonatal center; and
   b. DRG 685-690 for an in-state acute care hospital with a level III neonatal center;
3. The department shall assign a DRG 385-390 for a neonatal claim from a hospital which does not operate a level II or III neonatal center; and
4. The department shall compute a separate relative weight for a level II, or III neonatal intensity care unit (NICU) neonatal DRG;
   b. The department shall use base year claims from level II neonatal centers, excluding claims from any high intensity level II neonatal center, to calculate relative weights for DRGs 675-660; and
   c. The department shall use base year claims from level III neonatal centers to calculate relative weights for DRGs 685-690.

16. The department shall expend in aggregate by category (level I, II, or III neonatal center category) and not by individual facility:
(a) A total expenditure for level I neonatal center care equal to 100 percent of cost;
(b) A total expenditure for level II neonatal center care equal to 100 percent of cost; or
(c) A total expenditure for level III neonatal center care equal to 100 percent of cost.

17. The department shall reimburse an individual:
(a) Level I neonatal center for level I neonatal care at the average cost per DRG of all level I neonatal centers;
(b) Level II neonatal center for level II neonatal care at the average cost per DRG of all level II neonatal centers; or
(c) Level III neonatal center for level III neonatal care at the average cost per DRG of all level III neonatal centers.

18. If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.
(a) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each calendar day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.
   1. The department shall calculate an average daily rate by dividing the DRG base payment by the statewide Medicaid geometric mean length-of-stay for a patient's DRG classification.
   2. If a hospital qualifies for a high volume per diem add-on payment in accordance with Section 2(12) of this administrative regulation, the department shall pay the hospital the applicable per diem add-on for the DRG average length-of-stay.
   3. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.
   (b) For a hospital receiving a transferred patient, the department shall remit the DRG base payment, and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(19) The department shall treat a transfer from an acute care hospital to a qualified postacute care facility for selected DRGs in accordance with paragraph (b) of this subsection as a postacute care transfer.
(a) The following shall qualify as a postacute care setting:
   1. A psychiatric, rehabilitation, children's, long-term, or cancer hospital;
   2. A skilled nursing facility; or
   3. A home health agency.
(b) A DRG eligible for a postacute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(4)(C)(i).
(c) The department shall pay each transferring hospital an average daily rate for each day of stay.
   1. A payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.
   2. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay, up to full DRG base payment.
   3. The remaining DRGs as referenced in paragraph (b) of this subsection shall receive twice the per diem rate for the first day and the per diem rate for each following day of the stay prior to the transfer.
(d) The per diem amount shall be the base DRG payment allowed divided by the statewide Medicaid geometric mean length of stay for a patient's DRG classification.
(20) The department shall reimburse for an intrahospital transfer to or from an acute care bed to or from a rehabilitation or psychiatric distinct part unit:
(a) The full DRG base payment allowed, and
(b) The facility-specific distinct part unit per diem rate, in accordance with 907 KAR 1:815, for each day the patient remains in the distinct part unit.
(21)(a) The department shall reimburse for a kidney, cornea, pancreas, or kidney and pancreas transplant on a prospective per discharge methodology according to the patient's DRG classification.
(b) A transplant not referenced in paragraph (a) of this subsection, shall be reimbursed in accordance with 907 KAR 1:350.

Section 3. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:
(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and
(2) Exclude a service furnished by a home health agency, a skilled nursing facility or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 4. Direct Graduate Medical Education Costs at In-state Hospitals with Medicare-approved Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education costs is not provided to the department, pursuant to 42 C.F.R. 447.201(c) or other federal regulation or law, the department shall not reimburse for direct graduate medical education costs.
(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall reimburse for the direct costs of a graduate medical education program approved by Medicare as follows:

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(a) A payment shall be made:
1. Separately from the per discharge and per diem payment methodologies; and
2. On an annual basis; and
3. The department shall determine an annual payment amount for a hospital as follows:
1. The hospital-specific and national average Medicare per inpatient and resident amounts effective for Medicare payments on October 1 immediately preceding the universal rate year shall be provided by each approved hospital's Medicare fiscal intermediary;
2. The higher of the average of the Medicare hospital-specific per inpatient and resident amount or the Medicare national average amount shall be selected;
3. The selected per inpatient and resident amount shall be multiplied by the hospital's number of inpatient and resident days in the calculation of the indirect medical education operating adjustment factor. The resulting amount is an estimate of total approved direct graduate medical education costs;
4. The estimated total approved direct graduate medical education costs shall be divided by the number of total inpatient days as reported in the hospital's most recently finalized cost report on Worksheet D, Part 1, to determine an average approved graduate medical education cost per day amount;
5. The average graduate medical education cost per day amount shall be multiplied by the number of total days reported in the hospital's most recently finalized cost reports to determine the total graduate medical education costs related to the Medicare Program; and
6. Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 5. Budget Neutrality Factors. (1) When rates are rebased, estimated projected reinsurance in the universal rate year shall not exceed payments for the same services in the prior year adjusted for inflation using the inflation factor prepared by GII for the universal rate year and adjusted for changes in patient utilization.
(2) The estimated total payments for each facility under the reimbursement methodology in effect in the prior year prior to the universal rate year shall be estimated from base year claims.
(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated from base year claims.
(4) If the sum of all the acute care hospital's estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospital's adjusted estimated payments under the prior year's reimbursement methodology, each hospital's DRG base rate and per diem rate shall be multiplied by a uniform percentage to result in estimated total payments for the universal rate year being equal to total adjusted payments in the year prior to the universal rate year.

Section 6. Reimbursement Updating Procedures. (1) The department shall annually, on July 1, use the inflation factor prepared by GII for the universal rate year to inflate a hospital-specific base rate for rate years between rebasing periods.
(2) Except for an appeal in accordance with Section 18 of this administrative regulation, the department shall make no other adjustment.
(3) The department shall rebase DRG reimbursement every four (4) years.

Section 7. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.
(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 8. Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of a Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1 and the Supplemental Medicaid Schedule KMAP-4 as follows:
(a) A cost report shall be submitted:
1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year;
(b) Except as follows, the department shall not grant a cost report submission extension:
1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or
2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.
(c) If a cost report submission date lapsed and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.
(d) A cost report submitted by a hospital to the department shall be subject to audit and review.
(e) An in-state hospital shall submit to the department a final Medicaid-audited cost report upon completion of the Medicaid intermediary audit with an electronic cost report file (ECR).

Section 9. Unallowable Costs. (1) The following shall not be allowable costs for Medicaid reimbursement:
(a) A cost associated with a political contribution;
(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services; or
(c) A legal fee relating to a lawsuit against the Cabinet for Health and Family Services; or
(d) A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and
(e) A cost for travel and associated expenses outside the Commonwealth of Kentucky for purposes of a convention, meeting, assembly, conference, or a related activity.
(f) A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.
(g) If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.
(h) A hospital shall identify an unallowable cost on the Supplemental Medicaid Schedule KMAP-1.
(i) The Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted with the annual cost report.

Section 10. Trending of a Cost Report for DRG Re-basing Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or unaudited, shall be transfered to the beginning of the universal rate year to update a hospital's Medicaid cost.
(2) The department shall use the inflation factor prepared by GII as the trending factor for the period being trended.

Section 11. Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.
(2) The department shall use the inflation factor for the universal rate year.

Section 12. Re-admission. (1) An inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a re-admission and reviewed by the OIC.
(2) Re-admission for a readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-state Hospitals. (1) The department shall reimburse an acute care out-of-state hospital, except for a children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state, for inpatient care:
(a) On a fully-prospective per discharge basis based on the patient's diagnostic category; and
(b) An all-inclusive rate.
(2) The all-inclusive rate referenced in subsection 1(b) of this section of this administrative regulation shall:
(a) Equal the facility-specific Medicare base rate multiplied by the Kentucky-specific DRG relative weights, except that the DRG relative weight shall exclude any adjustment for in-state hospitals pursuant to 2006 Ky. Acts ch. 252;
(b) Exclude:
1. Medicare indirect medical education cost or reimbursement;
2. High volume per diem add-on reimbursement;
3. Disproportionate share hospital distributions; and
4. Any adjustment mandated for in-state hospitals pursuant to 2006 Ky. Acts ch. 252; and
(c) Include a cost outlier payment if the associated discharge meets the cost outlier criteria established in Section 2(13) of this administrative regulation;
1. The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim;
2. The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges;
3. The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year; and
4. The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge's outlier threshold.
(3) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, an all-inclusive rate equal to the average all-inclusive base rate paid to in-state children's hospitals.
(4) An out-of-state provider shall not be eligible to receive high volume per diem add-on payments, indirect medical education reimbursement or disproportionate share hospital payments.
(5) The department shall make a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to Quality Improvement Organization review and approval.
(a) The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim.
(b) The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.
(c) The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.
(d) The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge's outlier threshold.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section of this administrative regulation shall be contingent upon the department's receipt of corresponding federal financial participation.
(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.
(3) In accordance with subsections (1) and (2) of this section, the department shall:
(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:
1. A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:
   a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and
   b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18);
2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:
   a. Equal to the difference between payments made in accordance with Sections 2, 3, and 4 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;
   b. That is prospectively determined with no end of the year settlement; and
   c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and
3. A hospital that qualifies as an urban trauma center hospital in an amount:
   a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;
   b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;
   c. That is prospectively determined with an end of the year settlement; and
   d. That is consistent with the requirements of 42 C.F.R. 447.271.
(2) Make quarterly supplemental payments to the Appalachian Regional Hospital system:
1. In an amount that is equal to the lesser of:
   a. The difference between what the department pays for inpatient services pursuant to Section 2, 3, and 4 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or
   b. $7.5 million per year in aggregate;
2. For a service provided on or after July 1, 2005; and
3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds;
(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System; and
(d) Make a supplemental payment to an in-state high intensity level I neonatal center of $2,870 per paid discharge for a DRG 675 - 680.
(4) An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the facility.
(5) For the purpose of this section of this administrative regulation, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:703.
(6) A payment made under this section of this administrative regulation shall not duplicate a payment made via 907 KAR 1:820.
(7) A payment made in accordance with this section of this administrative regulation shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned or operated hospital the full cost of an inpatient service via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS)
(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by the hospital's operating cost-to-charge ratio.
(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.
(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.
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(b) If any difference remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor’s Records. If a hospital has a contract with a subcontractor for services costing or valued at $10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:
   (a) To the subcontractor’s financial information; and
   (b) In accordance with 907 KAR 1:672; and
   (2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 17. New Provider, Change of Ownership, or Merged Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

(2)(a) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(b) During the projected rate year, the budget shall be adjusted if indicated and justified by the submittal of additional information.

(c) In the case of two (2) or more separate entities that merge into one (1) organization, the department shall:
   (a) Merge the latest available data used for rate setting;
   (b) Combine bed utilization statistics, creating a new occupancy ratio;
   (c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trending and indexed costs;
   (d) Compute on a weighted average the rate of increase control applicable to each entity, based on the reported paid Medicaid days for each entity taken from the cost report previously used for rate setting; and
5. A cost report for the period starting with the day of the merger and ending on the fiscal year end of the merged entity shall also be filed with the department in accordance with Section 8 of this administrative regulation.

Section 18. Appeals. (1) An administrative review shall not be available for the following:

(a) A determination of the requirement, or the proportional amount of a budget neutrality adjustment in the prospective payment rate; or

(b) The establishment of:
   1. Diagnostic related groups;
   2. The methodology for the classification of an Inpatient discharge within a DRG; or
   3. An appropriate weighting factor which reflects the relative hospital resources used with respect to a discharge within a DRG.

(2) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) *Supplemental Medicaid Schedule KMAP-1*; January 2007 edition; and


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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 16, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2008 at 9 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman’s Conference Room Located on the First Floor at 1E-8; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency by August 14, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 2, 2008. 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 SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Darlene Burgess (502) 564-6511.

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for care in an inpatient acute care hospital. The Department for Medicaid Services (DMS) shall employ a diagnosis-related group (DRG) methodology to reimburse for inpatient acute care. Previously one (1) administrative regulation established DMS reimbursement for DRG hospitals, per diem hospitals and disproportionate share hospital (DSH) distributions. DMS divided the one (1) administrative regulation into three (3) with this administrative regulation establishing DRG hospital reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the payment methodology for inpatient hospital acute care.

(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 payment methodology for inpatient hospital acute care.

(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 payment methodology for Inpatient hospital acute 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: This administrative regulation is a new administrative regulation; however, it amends policy by reimbursing in aggregate for level I, II and III neonatal care at 100% of costs; reimbursing individual level I, II, or III neonatal centers at the average cost per DRG for the respective category and excluding high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal center relative weight calculations.

(b) The necessity of the amendment to this administrative regulation: The amended policy is necessary to ensure adequate reimbursement of neonatal care in turn to ensure the adequate availability of such care for Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by preserving the viability of inpatient hospitals providing neonatal care in order to ensure the adequate availability of neonatal care for Medicaid recipients.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by preserving the viability of inpatient hospitals providing neonatal care in
order to ensure the adequate availability of neonatal care for Medicaid recipient.

(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 all hospitals participating in the Kentucky Medicaid Program. Currently there are 105 in-state hospitals participating in the Medicaid 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 now, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative
regulation or amendment: The regulated entities will not be re-
quired to take any action to comply with the administrative
regulation. Presumably they may educate staff regarding the reimburse-
ment changes; however, no new requirements are mandated via
this administrative regulation.

(b) In complying with this administrative regulation or amendment,
how much will it cost each of the entities identified in question
(3): Reimbursement for neonatal care is enhanced but as the
funding source is a finite pool, other components of care may ex-
perience a reimbursement reduction.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Neonatal care reimbursement
is increasing which in turn should ensure the adequate availability of
neonatal care for Medicaid recipients.

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

(a) Initially: DMS projects the administrative regulation to be
budget neutral as it redistributes reimbursement within, rather than
infuses additional monies into, the existing funding pool.

(b) On a continuing basis: DMS projects the administrative
regulation to be budget neutral as it redistributes reimbursement
within, rather than infuses additional monies into, the existing fund-
ing pool.

(6) What is the source of the funding to be used for the imple-
mentation 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, matching funds of general fund
appropriations and hospital provider tax funds pursuant to KRS
142.303, 205.638, and 2006 Ky Acts ch. 252.

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

(8) Tying: Is tying applied? Out-of-state inpatient acute care
hospital reimbursement, contrary to in-state acute care hospital
reimbursement, shall not include provider tax enhancements as
provider tax legislation only applies to in-state hospitals. Level I, II,
and III neonatal care shall be reimbursed, in aggregate, at 100% of
costs in order to ensure the adequate availability of neonatal care
for Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal
mandate. 42 C.F.R. Chapter 412, Chapter 413 and 447.200, 447.250,
447.271, and 447.272 address inpatient hospital reimbursement
provisions.

2. State compliance standards. KRS 205.520(3) authorizes the
commissioner, by administrative regulation, to comply with a regulation
that may be imposed or opportunity presented by federal law for
the provision of medical assistance to Kentucky's indigent citizen.
KRS 205.560 addresses Medicaid reimbursement. 2006 Ky Acts
ch. 252, KRS 142.303 and 205.638 address the utilization of hospital
provider tax revenues to enhance inpatient hospital reim-
bursement.

3. Minimum or uniform standards contained in the federal
mandate. Medicaid agency payments to providers must be suffi-
cient to enlist enough providers so that Medicaid services are
available to recipients at least to the same extent that comparable
services are available to the general population. Payments for
hospital services should be rates that the State finds, and makes
assurances satisfactory to the United States Health and Human
Services Secretary, are reasonable and adequate to meet the
costs that must be incurred by efficiently and economically operat-
ed facilities to provide services in conformity with state and federal
laws, regulations, and quality and safety standards.

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

5. Justification for the imposition of the stricter standard, or
additional or different responsibilities or requirements. This admin-
istrative regulation does not impose stricter, than federal, require-
ments.

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 county-owned hospitals as well as state university teaching
hospitals.

3. Identify each state or federal regulation that requires or au-
thorizes the action taken by the administrative regulation. This
amendment is authorized by KRS 142.303, 205.520, 205 638,
2006 Ky Acts ch. 252, 42 C.F.R. 412 and 413.

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 gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year? This amend-
ment is not expected to generate additional revenue for
state or local government entities.

(b) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years? This
amendment is not expected to generate additional revenue for
state or local government entities.

(c) How much will it cost to administer this program for the first
year? DMS projects the administrative regulation to be budget
neutral as it redistributes reimbursement within, rather than infuses
additional monies into, the existing funding pool.

(d) How much will it cost to administer this program for subse-
quent years? DMS projects the administrative regulation to be
budget neutral as it redistributes reimbursement within, rather than infuses
additional monies into, the existing funding pool.

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

Fiscal Note:

Revenues (+/-): 
Expenditures (+/-): 
Other Explanation: No additional expenditures are necessary to
implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(New Administrative Regulation)

907 KAR 3:205. Hemophilia Treatment Reimbursement and
Coverage Via the 340B Drug Pricing Program.

RELATES TO: 42 U.S.C. Chapter 6A, Subchapter II, Part D,

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Section 1. Definitions. (1) "340B drug pricing program" means a federally-established drug discount program available for designated entities.

(2) "340B drug pricing program ceiling price" means the highest price allowed, by federal law, for a drug, factor product, or related item available via the 340B drug pricing program.

(3) "Comprehensive hemophilia diagnostic treatment center" or "CHDTC" means a center pursuant to 42 U.S.C. Chapter 6A, Subchapter II, Part D, subpart vii, 258b(4)(g).

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

(5) "Factor product" means a blood clotting agent used to treat hemophilia.

(6) "Recipient" is defined in KRS 205.8451(9).

Section 2. Participation Requirements. (1) To qualify for reimbursement via the department's 340B drug pricing program, a comprehensive hemophilia diagnostic treatment center shall:

(a) Be currently receiving a grant in accordance with KRS 205.842(1); and

(b) Submit the following to the United States Department of Health and Human Services (USDHHS), Health Resources and Services Administration (HRSA) and Office of Pharmacy Affairs (OPA):

1. A request to participate in the 340B drug pricing program to the United States Department of Health and Human Services, Health Resources and Services Administration, Office of Pharmacy Affairs;

2. The entity's Medicaid billing information; and

3. A completed 340B registration form; and

(c) Be approved by the department and the USDHHS HRSA OPA for participation in the 340B drug pricing program.

(2) A CHDTC participating in the department's 340B drug pricing program shall:

(a) Ensure that current information, including business name and address, are always provided to the United States Department of Health and Human Services, Health Resources and Services Administration, Office of Pharmacy Affairs; and

(b) Comply with 42 U.S.C. Chapter 6A, Subchapter II, Part D, subpart vii, 258b(a)(5) and (7).

(3) A CHDTC qualifying for reimbursement via the department's 340B drug pricing program pursuant to subsection (1) of this section shall be eligible for the reimbursement established in Section 4 of this administrative regulation on the first day of the calendar quarter following approval for participation. For example, a CHDTC approved for the department's 340B drug pricing program participation on January 10, 2009, shall be eligible to receive reimbursement via the program effective April 1, 2009.

Section 3. General Provisions. (1) For the department to reimburse for hemophilia treatment, including a factor product or related item, for a recipient:

(a) The recipient shall be a current recipient; and

(b) The factor product shall be:

1. Medically necessary for the recipient;

2. Approved by the Food and Drug Administration; and

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

Section 4. Hemophilia Treatment Reimbursement Via the 340B Drug Pricing Program. The department shall reimburse for hemophilia treatment, including a factor product or related item, provided by a participating CHDTC:

(1) Exclusively via the department's 340B drug pricing program;

(2) Not via the department's pharmacy reimbursement provisions established in 907 KAR 1:018; and

(3) A: the 340B drug pricing program ceiling price for the factor product pursuant to 42 U.S.C. Chapter 6A, Subchapter II, Part D, subpart vii, 258b plus a dispensing fee of twelve and one-half (12 1/2) cents per unit dose.

Section 5. Appeal Rights. A CHDTC may appeal a department decision associated with this administrative regulation in accordance with 907 KAR 1:571.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2008 at 9 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman's Conference Room located on the First Floor at 1E-B, 275 East Main Street; Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency by writing on August 14, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 2, 2008. Send written notice 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 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dr. Thomas Badgett (502) 564-4321 or Stuart Owen (562) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) coverage and reimbursement provisions for hemophilia treatment via a federal program known as a 340B drug pricing program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS coverage and reimbursement provisions for hemophilia treatment via a federal program known as a 340B drug pricing 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 DMS coverage and reimbursement provisions for hemophilia treatment via a federal program known as a 340B drug pricing 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 DMS coverage and reimbursement provisions for hemophilia treatment via a federal program known as a 340B drug pricing program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation:
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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.

List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: DMS projects that approximately 37 individuals will receive hemophilia treatment via the 340B drug pricing program rather than via regular Medicaid pharmacy coverage. Currently the University of Kentucky’s hemophilia treatment center is the only center known to qualify as a comprehensive hemophilia diagnostic treatment center (CHDTC); however, others may be interested in pursuing this option in the future depending upon the result of this initiative.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An entry who desires to participate as a CHDTC in the 340B drug pricing program must comply with and meet the corresponding federally-established requirements.
(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 imposed on a qualifying entity.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A qualifying entity will receive enhanced reimbursement for hemophilia treatment provided via the associated dispensing fee.

(4) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: The Department for Medicaid Services (DMS) anticipates that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually.
(b) On a continuing basis: DMS anticipates that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually.

(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: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

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

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? Only entities who qualify as comprehensive hemophilia diagnostic treatment centers in accordance with federal regulation shall be able to be reimbursed via the Department for Medicaid Services (DMS) 340B drug pricing 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? The Department for Medicaid Services (DMS) anticipates that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually.
(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 Department for Medicaid Services (DMS) anticipates that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually.
(c) How much will it cost to administer this program for the first year? CMS anticipates this administrative regulation saving rather than costing additional monies.
(d) How much will it cost to administer this program for subsequent years? DMS anticipates this administrative regulation saving rather than costing additional monies.
The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 8, 2008 at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the June 10, 2008 meeting were approved.

Present were:
- Members: Senators Joey Pendleton, Alice Forgy Kerr, and Gary Tapp; and Representatives Robert Damron, Danny Ford, Jimmie Lee, and Ron Weston.
- LSC Staff: Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Laura Milam, Emily Caudill, Jennifer Beeler, Laura Napier, and Ellen Steinberg.
- Guests: Mark Sipek, Personnel Board; Jonathan Buckley, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Kentucky Board of Nursing; Larry Arnett, Sandy Grzeszky, Abby Powell, Department for Environmental Protection, Division of Water; Allan Bryant, Tony Hatton, Cassandra Jobe, April Webb, Division of Waste Management; Amy Baker, Jeff Burton, Justice and Public Safety Cabinet; Stephanie Brammer-Barnes, David Hopkins, Office of Inspector General; Glenn Bryant, Ray Peters, Department for Mental Health and Mental Retardation Services; Karen Cooke, Shirley Eldridge, Phyllis Sosa, Department for Aging and Independent Living; Elizabeth Caywood, Justin Dearinger, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, July 8, 2008, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL BOARD: Board
- 101 KAR 1:335. Employee actions. Mark A. Sipek, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Kentucky State Board of Licensure for Professional Engineers and Land Surveyors: Board

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY BOARD OF NURSING: Board
- 201 KAR 20:070 & E. Licensure by examination. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 and 3 through 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Water: Water Quality Certification
- 401 KAR 9.010 & E. Section 401 Individual Water Quality Certification public notice. Larry Arnett, deputy commissioner of the Department of Natural Resources, and Sandy Gruzsky, executive director, represented the division.

In response to a question by Senator Tapp, Ms. Gruzsky stated that the division was working toward speeding up the electronic permit processing and addressing the permitting backlog, which she stated, has improved.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations and make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; (2) to amend Section 1 to correct a citation; (3) to amend Section 2 to include the cabinet's Web site address; (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend Section 5 to update edition dates for the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Division of Waste Management: Standards Applicable to Generators of Hazardous Waste

In response to a question by Senator Tapp, Mr. Hatton stated that the amendments did not make the administrative regulations more stringent than federal requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; 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.

401 KAR 32:050. Special conditions. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; (2) to amend the RELATES TO paragraph and Section 1 to correct citations; and (3) to amend Sections 1 through 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standards for Owners and Operators: Storage, Treatment and Disposal Facilities
- 401 KAR 34.005. Definitions for 401 KAR Chapter 34. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct citations and make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34.060. General financial requirements. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and sixteen DEP Forms to make technical corrections to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sec-
tions 2 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.

Interim Status Standards for Owners and Operators; Treatment, Storage and Disposal Facilities

401 KAR 35.005. Definitions for 401 KAR Chapter 35. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct citations and to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35.080. General financial requirements (IS). A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standards for Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

401 KAR 36:030. Recyclable materials used in a manner constituting disposal. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531, and (2) to amend Section 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.

Land Disposal Restrictions

401 KAR 37.005. Definitions for 401 KAR Chapter 37. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct statutory citations and to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37.040. Treatment standards. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; and (2) to amend Sections 2 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hazardous Waste Permitting Process

401 KAR 38.005. Definitions for 401 KAR Chapter 38. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct citations and to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38.040. Changes to permits; expiration of permits. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and DEP Form 7092 to make technical corrections to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; (2) to amend Sections 1 through 7 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to establish in Section 2 that DEP Form 7092 shall be notarized and that an original and four copies shall be submitted to the cabinet; and (4) to amend Section 7 to provide the new edition date for DEP Form 7092. Without objection, and with agreement of the agency, the amendments were approved.

Standards for Special Collection System Wastes

401 KAR 43.005. Definitions for 401 KAR Chapter 43. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct citations and to make technical changes to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections

501 KAR 3:140. Prisoner rights. Amy Barker, assistant general counsel, and Jeff Burton, assistant director of local facilities, represented the department.

In response to a question by Senator Tapp, Ms. Barker stated that the department made the changes requested by Representative Leo and the provisions of the reorganization authorized by Executive Orders 2008-507 and 2008-531.

In response to a question by Senator Kerr, Mr. Burton stated that the training instructed newly hired employees regarding identification of mental health problems, such as suicidal inmates. Mr. Burton stated that the training was conducted by the Department for Mental Health and Mental Retardation Services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to clarify that all personnel are required to have four hours of mental health training within their first year of service and one additional hour of training each year thereafter; and (2) to amend Sections 1 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary


501 KAR 6.140. Ball County Forestry Camp. A motion was made and seconded to approve the following amendments: to amend Section 1 and policies incorporated by reference to make technical corrections and to update policy edition dates. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Life Safety Facilities


CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Controlled Substances

902 KAR 55:110. Monitoring system for prescription controlled substances. Stephanie Brammer-Games, administrative regulation coordinator, and David R. Hopkins, project manager, represented the office.

In response to questions by Co-Chair Damron, Mr. Hopkins stated that the current KASPER time delay was approximately five to seven days after dispensing a medication. Mr. Hopkins stated that the administrative regulation deleted the requirement that dial-up service be used since most pharmacies now accessed the Internet through high-speed technology and could submit electronically through that technology. Mr. Hopkins stated that only a few pharmacies still used paper reporting. He stated that most dis-
pensers reported weekly, but that eight days was the maximum time allowed between dispensing and reporting to KASPER. Once the cabinet received the report, it was input into the KASPER system within one day. Co-Chair Damon requested that the cabinet follow up with the Subcommittee to report how many pharmacies are not using KASPER.

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 the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the function served by this administrative regulation; (3) to replace the Pharmacy Universal Claims Form, Incorporated by reference, with the KASPER Reporting Form and update references throughout the administrative regulation; (4) to add an edition date to the ASAP Telecommunications Format for Controlled Substances, incorporated by reference; (5) to amend Section 2 to delete references to a toll-free number for transmitting electronic reports by modem; and (6) to amend Sections 1, 2, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Mental Health and Mental Retardation Services: Institutional Care
908 KAR 3:050. Per diem rates. Glenn Bryant, acting director, and Ray Peters, program administrator, represented the department.

At the June 10, 2008 meeting of the ARRS, a motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to correct typographical errors and to comply with the drafting and format requirements of KRS Chapter 13A.

In response to a question by Senator Tapp, Mr. Bryant stated that facilities per diem rates were adjusted depending on cost data, such as how many patients were served. Mr. Bryant stated that this only affected the per diem rates for mental health services that pertain to ICF/MR facilities.

In response to a question by Senator Kerr, Mr. Bryant stated that the per diem for Eastern State was decreased from $440 to $410 because the cost data indicated a decrease in the costs for that facility.

A motion was made and seconded to approve the following amendments: to amend Section 1 to change references from “June 30, 2008” and “July 1, 2008” to the effective date of this administrative regulation in order to comply with KRS 13A.330. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Aging Services
910 KAR 1:160. Program and certification requirements for the adult day and Alzheimer’s respite program. Karen Cooke, social services specialist, and Phyllis Sosa, branch manager, represented the department.

In response to a question by Senator Tapp, Ms. Sosa stated that the proposed amendment would not impact patient care since the amendment corrected a technical error.

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; (2) to amend Section 6 to delete the requirement that the service provider comply with 910 KAR 1.220, Section 11, for self-administration of medications; (3) to amend Section 9(1)(c) to clarify that two staff members are required if two to ten clients are in attendance; (4) to amend Section 9(2)(a) to increase professional experience requirements for certain staff qualifications and clarify that experience may substitute for education to equal a minimum of five years; (5) to amend Section 9(3) to update tuberculosis screening requirements; (6) to amend Section 10(1) to require a monthly, instead of weekly, summary of client information and update the information required; (7) to amend the Application for Adult Day-Care Certification and the Certification Checklist, incorporated by reference, to make technical changes and updates to correspond with the amendments to the administrative regulation; and (8) to amend Sections 1 and 3 through 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Food Stamp Program
921 KAR 3.030. Application Process. Elizabeth Caywood, internal policy analyst, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to insert a citation; (2) to amend Section 15 to clarify that a KIM-100, KAMES Application, is considered filed when the form and any applicable supplements are received; and (3) to amend Section 26 to clarify that a public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 4. Without objection, and with agreement of the agency, the amendments were approved.

Child Welfare
922 KAR 1:310. Standards for child-placing agencies.

In response to a question by Representative Ford, Ms. Caywood stated that previously the administrative regulation provided that a firearm and ammunition be stored separately in locked containers, but that the new amendment required that precautions be taken to ensure that foster children cannot readily access firearms. Ms. Caywood indicated that a foster parent may still teach firearm safety and possess a firearm.

In response to a question by Co-Chair Damon, Ms. Caywood stated that the department was unable to require specific parameters for firearm storage, but that each foster parent was trained about the age, needs, and background of each child and further guidelines were provided by statute.

In response to a question by Representative Lee, Ms. Caywood stated that enforcement of the requirements in this administrative regulation would not be more stringent than requirements for any other parent.

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; (2) to amend Section 1 to insert a definition of “foster home”; and (3) to amend Sections 1 through 8, 10 through 14, 17, 18, and 20 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were referred to the August 12, 2008, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Kentucky Board of Veterinary Examiners: Board
201 KAR 16:110. Prescriptions and dispensation of drugs for animal use.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Fish
301 KAR 1:140. Special commercial fishing permit for Barkley and Kentucky Lakes.
301 KAR 1:146. Commercial fishing gear.
301 KAR 1:155. Commercial fishing requirements.

Hunting and Fishing
301 KAR 3.022. License, tag, and permit fees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Water: Water Quality Certification
401 KAR 9:020. Section 401 Water Quality Certification fees and certification timetable.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Vehicle Enforcement: Vehicle Enforcement
500 KAR 14:010. Motor Carrier safety requirements.
TRANSPORTATION CABINET: Department of Vehicle Regulation
   601 KAR 13.070. KRS 159.051. Compliance verification for a minor.

EDUCATION CABINET: Kentucky Board of Education: Department of Education
   School Administration and Finance
   702 KAR 3.270. SEEK funding formula.
   School Terms, Attendance and Operation
   702 KAR 7.065. Designation of agent to manage high school interscholastic athletics.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Insurance: Trade Practices and Freuds

Kentucky Horse Racing Authority: Thoroughbred Racing
   810 KAR 1:015. Claiming races.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health

The Subcommittee adjourned at 10:45 a.m. until August 12, 2008.
COMPILER’S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND
NATURAL RESOURCES
Meeting of June 11, 2008

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of June 11, 2008, having been referred to the Committee on June 4, 2008, pursuant to KRS 13A.290(6):

301 KAR 2:041

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 11, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of June 18, 2008

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 June 18, 2008, having been referred to the Committee on June 4, 2008, pursuant to KRS 13A.290(6):

201 KAR 20:110
201 KAR 20:161
201 KAR 20:225
008 KAR 3:060
922 KAR 2:170
922 KAR 2:210

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 18, 2008 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of July 7, 2008

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of July 7, 2008, having been referred to the Committee on July 2, 2008, pursuant to KRS 13A.290(6):

702 KAR 4:180

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 7, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON AGRICULTURE
AND NATURAL RESOURCES
Meeting of July 9, 2008

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of July 9, 2008, having been referred to the Committee on July 2, 2008, pursuant to KRS 13A.290(6):

301 KAR 1:130
301 KAR 2:049
301 KAR 2:061
301 KAR 2:111
301 KAR 2:122
301 KAR 2:172
301 KAR 2:178
301 KAR 4:201, Repeal of 301 KAR 4:200

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 9, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 9, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. 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 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

KRS Index

The KRS index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 35 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 35 of the Administrative Register, and is mainly broken down by agency.
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* Statement of Consideration not filed by deadline  
** Withdrawn, not in effect within 1 year of publication  
*** Withdrawn before being printed in Register  
(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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