ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 35, NUMBER 5
SATURDAY, NOVEMBER 1, 2008

ARRS – NOVEMBER 12, 2008 TENTATIVE AGENDA.... 1125
REGULATION REVIEW PROCEDURE .......................... 1129

EMERGENCIES:
Personnel Cabinet................................................. 1130
Department of Agriculture .................................... 1132
Transportation Cabinet.......................................... 1134
Cabinet for Health and Family Services...................... 1137

AS AMENDED:
Kentucky State Board of Elections ......................... 1150
Finance and Administration Cabinet ....................... 1151
Kentucky State Board of Accountancy ..................... 1151
Kentucky Board of Certification of Alcohol and Drug Counselors .... 1153
Kentucky Board of Emergency Medical Services ........... 1153
Department of Fish and Wildlife Resources ............... 1163
Cabinet for Economic Development ......................... 1167
EEC: Division of Water ......................................... 1168
EEC: Division for Air Quality ................................ 1185
Justice and Public Safety Cabinet ......................... 1186
Department of Insurance ...................................... 1188
Cabinet for Health and Family Services ............... 1198

AMENDED AFTER COMMENTS:
Public Protection Cabinet .................................... 1200
EEC: Division of Water ........................................ 1205
EEC: Division of Compliance Assistance ................. 1210
Education Cabinet .............................................. 1220
Labor Cabinet .................................................. 1221
Department of Insurance ..................................... 1224
Cabinet for Health and Family Services .............. 1225

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 2008:
Justice and Public Safety Cabinet ......................... 1237
Personnel Cabinet ............................................. 1243
Kentucky Board of Speech-Language Pathology and Audiology .... 1245
Kentucky Real Estate Appraisers Board .................... 1245
Agriculture ..................................................... 1247
EEC: Division for Air Quality ............................... 1250
Justice and Public Safety Cabinet ......................... 1268
Transportation Cabinet ...................................... 1274
Kentucky Board of Education ............................... 1277
Council on Postsecondary Education .................... 1281
Labor Cabinet ................................................ 1287
Department of Insurance .................................... 1304
Kentucky Horse Racing Commission ...................... 1316
Cabinet for Health and Family Services .............. 1319

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 15, 2008:
Kentucky Department of Veterans' Affairs ................ 1369
Kentucky Board of Speech-Language Pathology and Audiology .... 1370
EEC: Division for Air Quality ............................... 1371
Department of Financial Institutions ..................... 1373
Cabinet for Health and Family Services .............. 1376

OCTOBER 14, 2008 MINUTES OF THE ARRS .................. 1380
OTHER COMMITTEE REPORTS ............................... 1385

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ............................ E - 2
KRS Index .................................................................. E - 9
Technical Amendments ........................................ E - 20
Subject Index ................................................... E - 21

MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet November 12, 2008 at 10 a.m. in room 154 Capitol Annex. See tentative agenda on pages 1125-1128 of this Administrative Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2008 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the ADMINISTRATIVE REGISTER OF KENTUCKY by Volume number and Page number. Example: Volume 35, Kentucky Register, page 318 (short form: 35 Ky.R. 318).

KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Chapter</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>806</td>
<td>KAR</td>
<td>50: 155</td>
</tr>
</tbody>
</table>

Cabinet, Department, Office, Division, Board, or Major Function, or Major Function Specific Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY

ISSN 0096-1493

© 2008 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator David L. Williams
Senate President

Representative Jody Richards
House Speaker

Senate and House Members

Senator Katy Kratz Stine
President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator Dan Kelly
Majority Floor Leader

Representative Rocky Adkins
Majority Floor Leader

Senator Ed Worley
Minority Floor Leader

Representative Jeffrey Hoover
Minority Floor Leader

Senator Daniel Seum
Majority Caucus Chairman

Representative Charlie Hoffman
Majority Caucus Chairman

Senator Johnny Ray Turner
Minority Caucus Chairman

Representative Bob DeWeese
Minority Caucus Chairman

Senator Carroll Gibson
Majority Whip

Representative Rob Wilkey
Majority Whip

Senator Joey Pendleton
Minority Whip

Representative Stan Lee
Minority Whip

Robert Sherman, Director
Mike Robinson, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Richard L. "Dick" Roeding, Co-Chair
Representative Robert R. Damron, Co-Chair
Senator Alice Kerr
Senator Joey Pendleton
Senator Gary Tapp
Representative Danny R. Ford
Representative Jimmie Lee
Representative Ron Weston

Staff

Dave Nicholas
Emily Caudill
Donna Little
Sarah Amburgey
Emily Harkenrider
Karen Howard
Jennifer Bealer
Laura Napier
Ellen Steinberg
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, NOVEMBER 12, 2008, at 10:00 a.m., Room 154 Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

Grant Programs
11 KAR 5:200. Go Higher Grant Program.

Teacher Scholarship Loan Program
11 KAR 8:030. Teacher scholarships.

Osteopathic Medicine Scholarship Program
11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments.

Commonwealth Merit Scholarship Program

Robert C. Byrd Honors Scholarship Program
11 KAR 18.010. Robert C. Byrd Honors Scholarship Program.

KENTUCKY DEPARTMENT OF VETERANS AFFAIRS
Office of the Commissioner

Recognitions
17 KAR 5.010. Kentucky Medal for Freedom.

PERSONNEL CABINET

Personnel Cabinet, Classified
101 KAR 2 066 & E. Certification and selection of eligibles for appointment. (*E* expires 1/14/09) (Deferred from October)

REVENUE CABINET

General Administration
103 KAR 1:150. Electronic data match and levy procedures. (Deferred from October)

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

General Rules
105 KAR 1:130. Hazardous duty coverage.
105 KAR 1:140 & E. Contribution reporting. (*E* expires 03/01/2009)
105 KAR 1:345 & E. Rollovers and transfers of contributions to other plans. (*E* expires 03/01/2009)
105 KAR 1:380 & E. Minimum distribution. (*E* expires 03/01/2009)
105 KAR 1:390 & E. Employment after retirement. (*E* expires 03/01/2009)
105 KAR 1:400 & E. Federal taxation limitation year. (*E* expires 03/01/2009)
105 KAR 1:420 & E. Account established under 26 U.S.C. (*E* expires 03/01/2009)
105 KAR 1:430 & E. General Compliance with federal tax laws. (*E* expires 03/01/2009)

GENERAL GOVERNMENT CABINET
Board for Specialists In Hearing Instruments

Board
201 KAR 7:015. Fees.

Board of Barbering

Board

Board of Licensure for Professional Engineers and Land Surveyors

Board
201 KAR 18:072. Experience.

Board of Chiropractic Examiners

Board
201 KAR 21:041. Licensing; standards, fees.

Kentucky Boxing and Wrestling Authority

Athletic Commission
201 KAR 27:100 & E. General requirements for amateur mixed martial arts shows. (*E* expires 2/11/2009) (Amended After Comments)

Board of Licensure for Occupational Therapy

Board
201 KAR 23:090. Renewals.

Kentucky Real Estate Appraisers Board

Board
201 KAR 30.030. Types of appraisers required in federally-related transactions; certification and licensure. (Deferred from October)

Kentucky Board of Licensure for Private Investigators

Board
201 KAR 41:020. Application for licensure. (Deferred from October)
201 KAR 41:040. Fees. (Deferred from October)
201 KAR 41:060. Renewal and reinstatement procedures. (Deferred from October)
201 KAR 41:065. Inactive status. (Deferred from October)
201 KAR 41:070. Continuing professional education requirements. (Deferred from October)

- 1125 -
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

INDEPENDENT ADMINISTRATIVE BODIES
Kentucky Board of Emergency Medical Services

Board
202 KAR 7:030. Fees of the board. (Amended After Comments)

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

Fish
301 KAR 1:125. Transportation of fish.
301 KAR 1:410. Taking of fish by other than traditional fishing methods.

Game
301 KAR 2:015. Feeding of wildlife.
301 KAR 2:030. Commercial guide license.
301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. (*E* expires 02/25/2009)
301 KAR 2:227. Repeal of 301 KAR 2:223.
301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.
301 KAR 2:300. Black bears. (Not Amended After Comments) (Deferred from October)

Wildlife
301 KAR 4:110. Administration of drugs to wildlife.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water

Water Quality Standards
401 KAR 10.001 & E. Definitions for 401 KAR Chapter 10. (*E* expires 12/31/2008) (Amended After Comments) (Deferred from October)
401 KAR 10.025. Designation of uses of surface waters. (Amended After Comments) (Deferred from October)
401 KAR 10.030. General provisions. (Amended After Comments) (Deferred from October)
401 KAR 10.033. Antidegradation policy implementation methodology. (Amended After Comments) (Deferred from October)
401 KAR 10.031. Surface water standards. (Amended After Comments) (Deferred from October)

Division for Air Quality

Air Quality
401 KAR 52:081. Repeal of 401 KAR 52:080.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure. (Deferred from August)
501 KAR 6:270. Probation and parole policies and procedures.

Department of Kentucky State Police

Criminal History
502 KAR 30:060. Dissemination of criminal history record information. (Deferred from September)

Department of Criminal Justice Training

Kentucky Law Enforcement Council
503 KAR 1:110. Department of criminal justice training basic training: graduation requirements; records.

TRANSPORTATION CABINET
Department of Highways

Traffic
603 KAR 5:320. Safety in highway work zones. (Deferred from October)

Department of Vehicle Regulation

Motor Vehicle Commission
605 KAR 1:60. Temporary off-site sale or display event.
605 KAR 1:170. Temporary sale or display event license for a motor vehicle dealer trade association.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education

School Administration and Finance
702 KAR 3:080. Fidelity bond, penal sum for treasurer, finance officer and others. (Deferred from October)

School Terms, Attendance and Operation
702 KAR 7:085. Designation of agent to manage high school interscholastic athletics. (Not Amended After Comments) (Deferred from May)
702 KAR 7:130 & E. Approval of innovative alternate school calendars. (*E* expires 12/13/2008) (Deferred from September)

Office of Instruction
704 KAR 3:340. Commonwealth Diploma Program. (Deferred from October)

Department for Workforce Investment

Unemployment Insurance
797 KAR 1:110. Appeals. (Deferred from October)

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Compliance
803 KAR 2:180. Recordkeeping; reporting; statistics.

- 1126 -
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

Department of Workers' Claims
803 KAR 25:091 & E. Workers' compensation hospital fee schedule. (E* expires 1/26/2009) (Amended After Comments)

PUBLIC PROTECTION CABINET
Department of Insurance

Administration
806 KAR 2 091. Repeal of 806 KAR 2.090, 806 KAR 2:096.
806 KAR 2.092 & E. Disclosure of local government taxes. (E* expires 2/10/09) (Amended After Comments)
806 KAR 2.111. Repeal of 806 KAR 2.110.

Assets and Liabilities
806 KAR 6:190. Minimum standards for determining reserve liabilities and nonforfeiture values for prorated insurance. (Deferred from October)

Agents, Consultants, Solicitors, and Adjusters
806 KAR 9:340. Forms
806 KAR 9:350. Recognition of financial planning certifications and designation for receipt of fees and commissions

Life Insurance and Annuity Contracts
806 KAR 15:389 & E. Paid-up life insurance policies. (Comments Received)

Health Insurance Contracts
806 KAR 17:540 & E. ICARE Program high-cost conditions. (E* expires 1/1/09) (Deferred from October)
806 KAR 17:545 & E. ICARE Program employer eligibility, application process, and requirements. (E* expires 1/1/09) (Deferred from October)
806 KAR 17:555 & E. ICARE Program requirements. (E* expires 1/1/09) (Deferred from October)

Department of Financial Institutions
Division of Securities

Securities
808 KAR 10 041. Repeal of 808 KAR 10.040.
808 KAR 10 440 Examples of dishonest or unethical practice for broker-dealers and agents.
808 KAR 10.450 Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.

Kentucky Horse Racing Commission

Thoroughbred Racing
810 KAR 1:012. Horses. (Deferred from September)
810 KAR 1:015. Claiming races. (Not Amended After Comments) (Deferred from May)
810 KAR 1:018 & E. Medication; testing procedures; prohibited practices. (E* expires 03/04/2009)
810 KAR 1:025. Licensing thoroughbred racing. (Not Amended After Comments) (Deferred from October)
810 KAR 1:028 & E. Disciplinary measures and penalties. (E* expires 03/04/2009)

Harness Racing
811 KAR 1:070. Licensing standardbred racing. (Deferred from September)
811 KAR 1:090 & E. Medication; testing procedures; prohibited practices. (E* expires 03/04/2009)
811 KAR 1:095 & E. Disciplinary measures and penalties. (E* expires 03/04/2009)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

Certificates of Need

Office of Inspector General

Office of Audits and Investigations
906 KAR 1:011. Repeal of 906 KAR 1:010.
906 KAR 1:031. Repeal of 906 KAR 1:030.
906 KAR 1:170. Administrative subpoenas.

Department for Medicaid Services

Medicaid Services
907 KAR 1:015. Payments for outpatient hospital services. (Amended After Comments) (Deferred from October)
907 KAR 1:825 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement. (E* expires 1/12/2009) (Amended After Comments)

Payment and services
907 KAR 3.205. Hemophilia treatment reimbursement and coverage via the 340B Drug Program. (Amended After Comments)

Department for Income Support
Child Support Enforcement

Child Support
921 KAR 1:380. Child support enforcement program application and interstate process.

MOVED TO DECEMBER 2008 AGENDA DUE TO DEFERRAL OR RECEIPT OF COMMENTS

GENERAL GOVERNMENT CABINET
Board of Pharmacy

Board
201 KAR 2:105. Licensing and drug distribution requirements for wholesale distributors. (Comments Received)

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:083 & E. Holding and intrastate transportation of captive cervids. (E* expires 02/25/2005) (Comments Received)

- 1127 -
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water

Water Quality
401 KAR 5:010. Operation of wastewater systems by certified operators. (Amended After Comments)(Deferred)

Certified Operators
401 KAR 11:001. Definitions for 401 KAR Chapter 11. (Amended After Comments)(Deferred)
401 KAR 11:010. Board of certification. (Amended After Comments) (Deferred)
401 KAR 11:020. Standards of professional conduct for certified operators. (Amended After Comments) (Deferred)
401 KAR 11:030. Wastewater treatment and collection operators-classification and qualification. (Amended After Comments) (Deferred)
401 KAR 11:050. Operator certification. (Amended After Comments) (Deferred)
401 KAR 11:060. Certification fees. (Amended After Comments) (Deferred)

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources

Office of Mine Safety and Licensing
805 KAR 8.060. Criteria for the imposition and enforcement of sanctions against licensed premises. (Comments Received, SOC ext.)

PUBLIC PROTECTION CABINET
Department of Insurance

Health Insurance Contracts
806 KAR 17:081. Minimum standards for long-term care insurance policies. (Comments Received)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services

Medicaid Services
907 KAR 1:835 & E. Michelle P. Waiver services and reimbursement. (*E* expires 1/13/09) (Comments Received)
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.

A transcript of the hearing is not required 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.
This emergency administrative regulation incorporates by reference the 2009 plan year handbook for the Public Employee Health Insurance Program. The Public Employee Health Insurance Program is commonly known as the Kentucky Employees Health Plan. KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2009 plan year handbook on or before September 15, 2008. This emergency administrative regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state law. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2009 plan year handbook containing the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This administrative regulation incorporates by reference the plan year handbook distributed by the Department of Employee Insurance in the Personnel Cabinet to public employees covered under the self-insured plan. In addition to incorporating by reference the 2009 Public Employee Health Insurance Program Plan Year handbook, the 2009 Public Employee Health Insurance Program Benefits Selection Guide will also be incorporated by reference. The 2009 Public Employee Health Insurance Program Benefits Selection Guide is a simplified version of the handbook and specifically focuses on the 2009 open enrollment. This emergency regulation will be replaced by another ordinary administrative regulation. This emergency regulation will be identical to the ordinary administrative regulation filed.

STEVE BESHEAR, Governor
NIKKI JACKSON, Secretary
DANIEL P. EBERS, Executive Director

PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)


RELATES TO: KRS 18A.030, 18A.225, 18A.2254
STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)
EFFECTIVE: September 15, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a), requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance[summary-plan-descriptions] to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year handbook and a benefits selection guide, which is a simplified version of the handbook. This handbook shall be effective January 1, 2009 and shall distribute benefits information to employees of the Public Employee Health Insurance Program providing essential information on plan coverage, exclusions, and appeal rights.

Section 1. The Department of Employee Insurance shall distribute or make available the following items to the public employees covered under the self-insured plan:
(1) The 2009 Plan Year Public Employee Health Insurance Program Handbook, which shall include the premiums, employee contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan; and
(2) The 2009 Public Employee Health Insurance Program, Benefits Selection Guide, which shall be a simplified version of the handbook specifically focused on the 2009 open enrollment period.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "2009 Plan Year Public Employee Health Insurance Program Handbook", September 2008 edition; and
(c) "Commonwealth of Kentucky, Commonwealth Enhanced Summary Plan Description", February, 2008, edition;
(d) "Commonwealth of Kentucky, Commonwealth Prescription Drug Summary Plan Description, Commonwealth Select", February, 2008, edition;
(e) "Commonwealth of Kentucky, Commonwealth Select with Health Reimbursement Account (HRA) Summary Plan Description", February, 2008, edition;
(f) "Commonwealth of Kentucky, Select Summary Plan Description", January 1, 2008, edition;
(g) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Essential", January 1, 2008, edition;
(h) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Premier", January 1, 2008, edition;
(i) "Summary Plan Description, Commonwealth of Kentucky Health Care Flexible Spending Account", January 1, 2008, edition;
(j) "Summary Plan Description, Commonwealth of Kentucky Dependent Care Flexible Spending Account", January 1, 2008, edition; and

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: September 12, 2008
FILED WITH LRC: September 15, 2008 at 3 p.m.

CONTACT PERSON: Joe R. Cowles, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601; phone (502) 564-7430, fax (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joe R. Cowles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates, by reference, the 2009 plan year handbook, for health benefit plans offered through the Public Employee Health Insurance Program. The Public Employee Health Insurance Program is commonly known as the Kentucky Employees Health Plan. The 2009 handbook contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. In addition to incorporating by reference the 2009 Public Employee Health Insurance Program Plan Year handbook, the 2009 Public Employee Health Insurance Program Benefits Selection Guide will also be incorporated by reference. The 2009 Public Employee Health Insurance Program Benefits Selection Guide is a simplified version of the handbook and specifically focuses on the 2009 open enrollment.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory
mandate of KRS 18A.2254. More specifically, KRS 18A.2254, requires the Personnel Cabinet to incorporate by reference the 2009 plan year handbook distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. Said handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation aids in the effectuation of the statute KRS 18A.2254 by incorporating by reference, the 2009 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, exclusions, and appeal rights for participants of Public Employee Health Insurance Program for the plan year 2009. The 2009 handbook contains the premiums, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. In addition to incorporating by reference the 2009 Public Employee Health Insurance Program 2009 Plan Year handbook; the 2009 Public Employee Health Insurance Program Benefits Selection Guide will also be incorporated by reference. The 2009 Public Employee Health Insurance Program Benefits Selection Guide is a simplified version of the handbook and specifically focuses on the 2009 open enrollment. The Public Employee Health Insurance Program Summary Plan Descriptions previously incorporated by reference are deleted from this regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit plans to public employees for the 2009 plan year and the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2009 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statute: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2009 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 147,000 eligible employees under KRS 18A.225(1)(a) and a total of 237,000, which would include qualifying beneficiaries and dependents.

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

(a) Noting the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions as administrative regulations. This is an amendment. The 2009 plan year Handbook and Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2009 plan year. Specifically, the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2009 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will have a slight cost impact to participating agencies and participants covered under the Public Employee Health Insurance Program. This cost impact is represented in employee and employer contributions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2009 will have comparable benefits to the 2008 plan year.

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

(a) Initially: The Public Employee Health Insurance Program is approximately a $1.3 billion dollar program. Costs of implementing this administrative regulation are believed to be similar to previous plan years.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be similar to previous plan years.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, retirees, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2257, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2285, 18A.2297, and Internal Revenue Code Subsections 105, 106, 125, 152, and 213.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years. The Public Employee Health Insurance Program is approximately $1.3 billion dollar program.

(d) How much will it cost to administer this program for subsequent years? The sources of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund. Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2010 and each subsequent plan year.

STATEMENT OF EMERGENCY

302 KAR 79:010E

This emergency administrative regulation is being promulgated in response to a changing gasoline market that is increasing the utilization of ethanol as a blend to conventional gasoline. A ten (10) percent ethanol blend will boost the octane of conventional gasoline by as much as two (2) points. The current administrative regulations governing the sale of gasoline set a maximum octane rating for regular unleaded at eighty-seven (87) and mid-grade at eighty-nine (89). An ethanol blended gasoline which is currently sold in most areas of Kentucky would boost regular unleaded to an octane rating of eighty-nine (89) and mid-grade to an octane rating of ninety-one (91), thereby rendering both out of compliance with current administrative regulations. The current administrative regulation does not place an upper limit on premium gasoline octane. 302 KAR 79:010 has been in effect for many years, but the increased usage of ethanol, mandated by the Federal Renewable Fuels Standard revised as a part of the 2007 Energy Independence and Security Act, has created a situation in which ethanol blended gasoline, marketed to comply with the Federal Renewable Fuels Standard, may be out of compliance with 302 KAR 79:010. Suppliers have notified retailers that they will not risk selling their blended product out of compliance, placing Kentucky's gasoline supply at risk in an already lumpy market created by a shortage of RFG and other gasoline due to weather disruptions in the southern states and the Gulf of Mexico. An ordinary administrative regulation is not sufficient because it would not timely provide relief from enforcement policies that could unintentionally disrupt the state's gasoline market. This proposed emergency administrative regulation will be replaced with an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
RICHELLE FARMER, Commissioner

DEPARTMENT OF AGRICULTURE
(Emergency Amendment)

302 KAR 79:010E. Testing and inspection program.

RELATES TO: KRS 363.900-363.908
STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306.12, 40 C.F.R. 80.27
EFFECTIVE: October 10, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions. (1) "Distributor" means any person who transports, stores, or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer facility.

(2) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline with a substantial amount of one (1) or more oxygenates added.

(3) "Octane rating" means the rating of the antiknock characteristic of a grade or type of gasoline which is determined by taking the average of the sum of the research octane number and the motor octane number.

Section 2. Administration. The Division of Regulation and Inspection, Kentucky Department of Agriculture shall administer the Motor Fuels Inspection and Testing Program pursuant to KRS 363.900-908.

Section 3. Standard Specifications. (1) Gasoline offered for sale at a retail facility shall conform to ASTM D-4814 specifications, with the following exceptions:

(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) per square inch and the ASTM V/C (vapor to liquid ratio) specification is waived as required by KRS 363.904(1)(l)(b).

(b) For the periods from May 1 through September 15, the concentration of ethanol shall be at least nine (9) percent and no more than ten (10) percent by volume of the gasoline to qualify for the increased vapor pressure allowance.

(2) The test methods used to determine the standards of fuel quality shall conform to ASTM D-4814.

(3) Samples of motor fuels obtained for testing shall be obtained in a manner consistent with ASTM D-4814.

(4) Gasoline shall not be offered for retail sale under the name "premium" or "super" gasoline unless the antiknock octane index is greater than or equal to ninety-one (91) antiknock octane index.

(5) Gasoline shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless the antiknock octane index is greater than or equal to eighty-nine (89) and less than or equal to ninety-four (94) antiknock octane index.

(6) Gasoline shall not be offered for retail sale under the name "regular" gasoline unless the antiknock octane index is greater than or equal to eight-six (86) and less than or equal to eighty-eight (88) antiknock octane index.

Section 4. General Considerations. (1) Gasoline, diesel fuel, and gasoline-oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:

(a) The name of the person transferring the motor fuel;

(b) The name of the person to whom the motor fuel is being transferred;

(c) The date of the transfer;

(d) The octane rating, if the motor fuel is gasoline or a gasoline-oxygenate blend; and

(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

(2) Each retail facility selling motor fuel shall retain the bills of lading or invoices at the location to which the motor fuel is transferred for a period of not less than thirty (30) days. If a person sells motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, if the bills of lading or invoices are made available to the department upon request.

(3) Retail dispensing devices.

(a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each octane rating shall be placed on the face of the dispenser.

(b) The label, or labels, shall be placed conspicuously on the dispenser and be in full view of consumers. The label, or labels, shall also be placed as near as reasonably practical to the price of the gasoline.

(c) The label showing the minimum octane rating shall meet the same specifications as required under 16 C.F.R. Part 306.12.

Section 5. Diesel Fuel. (1) Diesel fuel offered for sale at a retail
facility for use as a motor fuel shall conform to ASTM D-975.

(2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel". The labeling shall be placed conspicuously on the dispenser and be in full view of consumers.

Section 6. Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.

(2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of competent jurisdiction.

(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department inspector shall present proper identification to the employee in charge prior to obtaining samples.

(4) The department may issue a stop-sale order for any motor fuel not in compliance with provisions of this administrative regulation. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation of the violation. A stop-sale order shall be rescinded by the department upon resolution of the violation. The stop-sale order shall apply only to the location where sample analysis indicates an ASTM specification violation.

Section 8. Violation Process. (1) If the department determines a violation of KRS 363.900-908 has occurred, the offending party shall be immediately notified in writing of the violation. A notice of violation which contains a brief description of the specific violation shall be issued.

(2) A stop-sale order may be included with the notice of violation.

(3) If a stop-sale order is issued, the product shall be removed from sale to the public until the product is brought into compliance with KRS 363.900-908.

(4) A certification that the product meets the requirements of KRS 363.900-908 shall be furnished to the department before sale shall be resumed. Additional samples of the product may be required.

(5) The retailer, within ten (10) days of receipt of notice of violation, shall provide detailed documentation to the department describing the corrective action to bring the product into compliance with KRS 363.900-908.

(6) In issuing an order under KRS 363.900 to 363.908, the department shall use the "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995" and may also consider the degree and extent of harm caused by the violation, the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation, whether the violation was committed willfully, and the compliance record of the violator when determining the civil penalty to be assessed.

(7) For a first violation, the civil penalty shall not exceed $1,000 nor be less than twenty-five (25) dollars. For a second or subsequent violations, the civil penalty shall not exceed $5,000 nor be less than fifty (50) dollars.

(8) The civil penalty shall be due within thirty (30) days of receipt of the notice of violation unless a hearing is requested in accordance with subsection (10) of this section.

(9) Failure to pay a civil penalty within thirty (30) days after receipt of the violation may result in a stop-sale order being issued by the department.

(10) Upon receipt of notice of violation, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's findings and order. The hearing shall be conducted in accordance with KRS Chapter 13B.

(11) Appeals may be taken from final orders within thirty (30) days to the Franklin Circuit Court.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (c) "American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, September 1995 edition";
- (d) "16 C.F.R. 306.12 (revised as of January 1, 2002)"; and
- (e) "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: October 6, 2008
FILED WITH LRC: October 10, 2008 at 10 a.m.
CONTACT PERSON: Mark Farrow, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-6099, fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Farrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: Changes octane requirements for regular and mid-grade ethanol blended gasoline.

(b) The necessity of this administrative regulation: Ethanol blending causes octane value to exceed the maximum allowable values.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 363 requires the commissioner to implement an inspection and testing program for motor fuels.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will bring retail sellers of ethanol blended gasoline into compliance.

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

(a) How the amendment will change this existing administrative regulation. Changes definition of regular and mid-grade gasoline.

(b) The necessity of the amendment to this administrative regulation. To bring regulated entities into compliance with state law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 363 requires the commissioner to implement an inspection and testing program for motor fuels.

(d) How the amendment will assist in the effective administration of the statutes: Will allow regulated entities to be in compliance with state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,300 retail fuel establishments in Kentucky. Those that sell ethanol blended gasoline will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required by the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-
tion (3): -
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Regulated entities selling ethanol
blended gasoline will be in compliance with state law.
(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: -
(b) On a continuing basis: -
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: De-
partment of Agriculture funds.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No increase in
fees or funding will be necessary.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: No fees
are directly or indirectly established or increased.
(9) TIERING: Is tiering applied? Tiering is not applied as this
regulation applies equally to all regulated entities that sell ethanol
blended gasoline.

STATEMENT OF EMERGENCY
601 KAR 1:040E

The Unified Carrier Registration Agreement ("UCRA") is estab-
lished by federal law in the Unified Carrier Registration Act of 2005.
This federal legislation replaced the Single State Registration pro-
gram that applied to only interstate for-hire motor carriers and im-
possed the safety compliance requirements and fee payment to all
motor carriers that operate in interstate commerce and are subject
to U S Department of Transportation requirements. This federal
legislation was effective January 1, 2007 however, the Unified
Carrier Registration Board was not appointed until May 2007 to set
the rules and fees. The fees were approved in September 2007.
This emergency administrative regulation is being promulgated to
implement those new federal regulations pertaining to the UCRA
and establishes a program for the collection of the fees set forth in
that program. It further insures the ability of the state's inspecting
personnel to enforce compliance with the new federal safety pro-
gram. This emergency administrative regulation will allow the un-
terrupted enforcement of the Federal Motor Carrier Safety Regula-
tions in order to prevent the risk of imminent danger to public safety
and welfare caused by carriers operating in Kentucky that are not in
compliance with those safety requirements. It will also assist the
agency in its effort to collect three (3) million in fee payments from
2007. This emergency administrative regulation will be re-
placed by an ordinary administrative regulation. The ordinary ad-
ministrative regulation is identical to this emergency administrative
regulation.

STEVE BESHEAR, Governor
JOSEPH W. PRATHER, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:040E. Application for operating authority and
registration of motor carriers.

RELATES TO: KRS [Chapter-281] 281.014, 281.015, 281.016,
281.017, 281.018, 281.019, 281.020, 281.620, 281.625, 281.637, 281.650, 281.660,
281A.010(9), 49 C.F.R. Part 367, 49 U.S.C. 14504a
STATUTORY AUTHORITY: KRS 281.600(1), 281.620(1),
EFFECTIVE: September 22, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS
281.600(1) authorizes the Transportation Cabinet to regulate motor
carriers. This administrative regulation establishes the application
procedure for Intrastate operating authority in the Commonwealth and the registration
procedure for Interstate motor carriers operating in Kentucky pursuant to authority granted by the
United States Department of Transportation.

Section 1. Kentucky Intrastate Passenger or Household Goods
Authority. (1)(a) An application for operating authority to engage in
Kentucky intrastate commercial operating authority or the transportation of
persons except for charter bus transportation or household goods
shall be made on the following appropriate forms:
1. Transportation Cabinet form TC 93-10E, Application for
Operating Authority, Household Goods-[revise April-1999];
2. Transportation Cabinet form TC 93-11E, Application for
Operating Authority, Disabled Persons Carrier-[revise April-1999];
3. Transportation Cabinet form TC 93-12E, Application for
Operating Authority, Bus and Airport Shuttle, [revise April-1999];
4. Transportation Cabinet form TC 93-13E, Application for
Operating Authority, City Limousine and, [TAXI][revised
April-1999]; or
5. Transportation Cabinet form TC 93-15E, Application for
Operating Authority, County Limousine and, [TAXI][revised
April-1999];
(b) The application shall be accompanied by a filing fee of
twenty-five (25) dollars.
(c) All applications and exhibits shall be filed with answers
typewritten or printed legibly in Ink. Each question shall be fully
answered and all instructions with the application shall be read and
fully complied with.
(2)(a) If the applicant is a corporation, a copy of the corpo-
ration's certificate of good standing from the Secretary of State in the
jurisdiction in which it was incorporated shall be submitted with the
application.
(b) If the applicant is a corporation, a Kentucky process
agent shall be listed.
(c) If the applicant is a foreign corporation, a Kentucky process
agent shall be listed.
(d) The application shall be accompanied by the applicant's
financial statement prepared in accordance with 601 KAR 2 010.
(e) An application shall be sworn to by the applicant or a
responsible official acting for the applicant.
(f) A hearing shall not be called or authority issued upon an
incomplete application.

Section 2. Temporary Authority Applications. (1)(a) An appli-
cation for temporary authority shall be made to the Transportation
Cabinet by petition.
(b) The petition shall set forth the facts relied on by the appli-
cant as showing an immediate and urgent need for the authority
sought in the petition.
(c) All existing carriers having authority to perform the pro-
posed service between any of the points sought in the petition shall
be fully identified and the authority of each as affected by the appli-
cation shall be stated.
(d) The applicant shall have the burden of proof in showing
that any existing carriers with authority are not capable of meeting
the need for service.
2. In lieu of meeting this burden, the applicant may file a waiver
from each carrier authorized to serve the area sought or any part
thereof in the form of a letter from each carrier waiving any objec-
tion to the temporary grant of authority.
(2) There shall also be filed with the petition a verified state-
ment. The supporting statement shall contain at least the following
information:
(a) Name and address of the motor carrier who has filed the
application for temporary authority;
(b) Statement of character and reputation of the applicant and
a brief history of the applicant's work history, including any expe-
rience in providing transportation services;
(c) Name, address and interest of each person filing a supporting
affidavit;
(d) A statement of how the transportation service, if any, is now
obtained and how it was obtained in the past;
(e) A statement of when the transportation service is needed and
the reasons why the need is immediate and urgent;
(f) An estimate of how long the need for the transportation
service will continue and a statement that the person making the supporting statement would support a permanent service application;

(g) A statement of the consequences if this transportation service is not made available; and

(h) A statement of incidents where efforts have been made to obtain the service from existing motor carriers and the;

1. Dates[dates] and results of these efforts;

2. Name[the name] and address of all existing carriers who have either failed or refused to provide the service; and

3. Reason[the reason] given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed in subsection (2) of this section if one (1) of the following conditions exists:

(a) There are no existing carriers with authority within the scope and area of the application,

(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) There are unusual and emergency conditions; or

(d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, an application for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit (1)(a) An application for approval to transfer a certificate or permit issued by the Transportation Cabinet authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars.

(b) The application shall be made on Application for Approval of Transfer of Certificate or Permit, form TC 93-147 [effective April 1997].

(c) All applications and exhibits shall be filed with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation’s certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old when the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3)(a) The application shall be accompanied by the transferee’s financial statement prepared in accordance with 601 KAR 2:010.

(b) An application shall be sworn to by the applicant or a responsible official acting for the applicant.

(c) A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

Section 4. Interstate Operating Authority - [For-Hire] Motor Carriers. (1) 49 U.S.C. 14504a, the Unified Carrier Registration Act of 2005[49 C.F.R. Part 367 revised October 1, 2001] shall govern the registration of [the for-hire] motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; or

(b) Those which are operating in interstate commerce.

(2) The Unified Carrier Registration Agreement (UCRA) "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective June 1, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of [for-hire] motor carriers operating in interstate commerce.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 C.F.R. Part 367.

(4) The [Kentucky] fee for the issuance of the registration[receipt] required under the UCRA shall be the fee established in 49 C.F.R. 367.20 by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

Section 5. [Contract Bus Carrier Permit, Intrastate(1)] Each application for authority as an intrastate contract bus carrier shall include:

(a) Two (2) copies of the contract under which the applicant desires to operate.

(b) The original contract shall be executed by the applicant/buyer and seller of the contract and shall set out:

(c) The rate applicable;

(d) The extent and scope of the activity covered by the contract;

(e) The minimum number of passengers to be transported.

(6) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(7) At least one (1) of the contract copies shall have original signatures.

(8) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department;

(b) Made a part of the permit.

(9) The contractor shall be considered to be a commercial motor vehicle as defined by KRS 281A.010(9) except that it shall be designed to transport fifteen (15) or more persons, including the driver.

(10) Each application shall include a filing fee of twenty-five (25) dollars.

(11) The applicant shall certify knowledge of and compliance with 601 KAR 1:005, Sections 2, 3(1)(b) and 4 and with the provisions of KRS Chapter 281A relating to commercial drivers licenses.

(12) The applicant shall be required to file evidence of insurance as required by KRS 281A 655(4).

(13) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.

(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

Section 6. Charter Bus Applications. (1) An application for operating authority as a charter bus operator pursuant to KRS 281.637 shall be made on form TC 93-300E [effective April 1999] "Application for Charter Bus Operating Authority."

(2) In accordance with KRS 281A.010[6][d], a charter bus shall be considered to be a commercial motor vehicle as defined by KRS 281A.010(8) except that it shall be designed to transport seventeen (17) or more persons, including the driver.

(3) Each application shall include a filing fee of twenty-five (25) dollars.

(4) The applicant shall certify knowledge of and compliance with 601 KAR 1:005, Sections 2, 3(1)[b] and 4 and with the provisions of KRS Chapter 281A relating to commercial drivers licenses.

(5) The applicant shall be required to file evidence of insurance as required by KRS 281A 655(4).

(6) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.

(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

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

(a) Form TC 93-10E, "Application for Operating Authority, Household Goods", July 2006,[revised April 1999];

(b) Form TC 93-11E, "Application for Operating Authority, Disabled Persons Carrier", July 2006,[revised April 1999];

(c) Form TC 93-12E, "Application for Operating Authority, Bus and Airport Shuttle", July 2006,[revised April 1999];

(d) Form TC 93-13E, "Application for Operating Authority, City Limousine and Taxi", July 2006,[revised April 1999];

(e) Form TC 93-15E, "Application for Operating Authority, County Limousine and Taxi", July 2006,[revised April 1999];

(f) Form TC 93-17E, "Application for Approval of Transfer or Lease of Certificate or Permit", July 2002[Application for Charter
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008


(2) This [The] material in subsection (1)(a) through (e) and (f) of this section may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, 200 Mero Street [Office of General Counsel, Hearings Section, State Office Building, 651 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

(3) The material incorporated in subsection (1)(f) and (g) of this section may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Third Floor of the State Office Building, 601 East High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

JOSEPH PRATHER, SECRETARY
APPROVED BY AGENCY: September 15, 2008
FILED WITH LRC: September 22, 2008 at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana C. Fugazzi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides the procedures for making initial and renewal applications to the Cabinet pursuant to various provisions of KRS Chapter 261 for authority to operate various types of transportation of goods or persons.
(b) The necessity of this administrative regulation: The procedures for making initial and renewal applications to the Cabinet pursuant to various provisions of KRS Chapter 261 for authority to operate various types of transportation of goods or persons.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 261 requires motor carriers to obtain authority to operate. KRS 281.60 provides broad authority for the Transportation Cabinet to regulate these operators. KRS 281.610 provides authority to the Department of Vehicle Regulation to regulate interstate commerce under the authority of and in accordance with the provisions of any Act of Congress.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently provides procedural guidelines for the application and renewal process and sets forth requirements for each type of operating authority.
(2) If 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 Interstate Operating Authority will be amended to include 49 U.S.C. 14504a, the Unified Carrier Registration Act of 2005. The amendment also updates material incorporated by reference.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the Cabinet's authority to administer and enforce the Unified Carrier Registration Act.
(c) How the amendment conforms to the content of the authorizing statutes: The Unified Carrier Registration Act of 2005 is an Act of Congress relating to interstate commerce. KRS 281.610 allows the Transportation Cabinet to regulate such commerce under the authority of and in accordance with the provisions of any Act of Congress vesting in or delegating to the commissioner such authority as an agency of the United States government.
(d) How the amendment will assist in the effective administration of the statutes: By adopting the Unified Carrier Registration Agreement the Cabinet will have the guidelines in place to properly administer this federal and state program. Further, this will enable Kentucky Vehicle Enforcement the ability to properly enforce the requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky has approximately 14,000 commercial motor carriers that will need to register under this 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: All commercial carriers will have to complete an application in an electronic format or by paper and submit the required fees as established by the Unified Carrier Board of Directors. This application and fee process replaces the Single State Registration System.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Interstate commercial motor vehicles owned or operated within the twelve month period ending June 30 of the year immediately prior to the year for which Unified Carrier Registration is made will need to pay based upon the current fee chart of 0-2=$39.00, 3-5=$116.00, 6-20=$239.00, 21-100=$806.00, 101-1000=$3,840.00, 1001-more=$37,500.00. Fees may be changed and mandated from the UCR Board on an annual basis.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All of the motor carrier industry will pay fees rather than only the for-hire motor carriers as required under the Single State Registration System that the Unified Carrier Registration Act replaced.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Additional postage expense will occur since the Single State Registration System only applied to 3,500 Kentucky carriers and the Unified Carrier Registration Act will apply to over 14,000. The postage expense will occur on the annual renewal notice and mailing back the receipt. Other additional expenses are unknown at this time.
(b) On a continuing basis: Ongoing postage expense.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road fund monies are used for administration and enforcement of these provisions.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. None anticipated.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation adopts the Unified Carrier Registration Agreement which contains fees as identified in question 4(b).
(9) TIERING: Is tiering applied? Yes, there is tiering in the regulatory scheme with varying requirements for the different types of operating authority.

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? Yes
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? Yes
(b) How much revenue will this administrative regulation gen-
program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.200 requires that a work program for a recipient of Kentucky Transitional Assistance Program be prescribed by administrative regulations. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation sets forth the technical requirements of the Kentucky Works Program.

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" is defined by 45 C.F.R. 260.31.

(5) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).

(6) "Concerns?" means a hardship the individual shall overcome to become employed and self-sufficient.

(7) "Convergence" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(8) "Core service core service provider for a family member living in the home by a work-eligible individual other than the time:"

(a) The family member spends sleeping, or

(b) In the home by a work-eligible individual other than the time:"

(9) "Disability" is defined by 42 U.S.C. 12102(2)(A). In accordance with 42 U.S.C. 12102(2)(J), major life activities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

(10) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(11) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(12) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for:"

1. An adult basic education program;

2. A general educational development (GED) program; or

3. A literacy program;

(b) A semester system in a college or university of:"

1. Twelve (12) semester hours or more; or

2. Six (6) semester hours or more during the summer term;

4. The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

5. The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(13) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(14) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(g).

(15) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2).

(16) "Kentucky Works" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(17) "On-the-job training" is defined by 45 C.F.R. 261.2(t).

(18) "Part-time enrollment" means enrollment with a post-

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 2:370E. Technical requirements for Kentucky Works.

EFFECTIVE: September 29, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant
secondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.

(10)(14) "Reasonable distance" means the distance customarily available within a locality.

(12)(16) "Subsidized employment" is defined by 45 C.F.R. 261.2(b) and (c).

(20)(24) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

(21)(22) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the non-educational needs of the child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(22)(23) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(b).

(23)(24) "Wage supplementation" means a component in which the employer hires a participant and receives reimbursement from the cabinet for a portion of wages paid to the participant.

(24)(26) "Work-eligible individual" is defined by 45 C.F.R. 261.2(h).

(25)(26) "Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual as follows:

(a) A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week for ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c)(8), 9, and 11 of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to have at least a minimum of:

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of thirty-five (35) hours per week combined from both parents with the number of hours required of each parent as follows:

   a. Thirty-five (35) hours per week for one (1) of the parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)(8), 9, and 11 of this subsection or in literacy or adult education;

   b. Twenty (20) hours per week for the other parent, with all twenty (20) hours in an activity pursuant to paragraph (c)(1) through 4 and 6 of this subsection.

2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)(8), 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home or with a severe disability pursuant to 921 KAR 2006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include:

1. Unsubsidized employment;

2. Subsidized employment;

3. Work experience training;

4. On-the-job training;

5. Job search and job readiness assistance;

6. Community service activities;

7. Full-time enrollment [progressing satisfactorily], as defined by the educational institution or program, in post secondary or vocational education not to exceed twenty-four (24) cumulative months during which the participant will not be required to participate in other activities.

8. Full or part-time enrollment, [progressing satisfactorily] as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 of this paragraph;

9. Attendance at secondary school or equivalent if the recipient:

   a. Has not completed secondary school or equivalent;

   b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;

   c. [Makes satisfactory progress as defined by the educational institution or program in accordance with 45 C.F.R. 261.2(a)]

10. Provision of child care services to an individual participating in community service activities;

11. Job skills training directly related to employment;

12. Based on the findings of the assessment, an allowable preparation activity that includes:

   a. Domestic violence counseling;

   b. Life skills training;

   c. Substance abuse program;

   d. Mental health counseling;

   e. Vocational rehabilitation;

   f. Literacy;

   g. Adult education;

13. Wage supplementation, which:

   a. May be available in limited areas and may expand into additional areas; and

   b. (63) Shall not commence until the participant has signed form ["KWK-230, Wage Supplementation Program Participant Agreement"]

(2) Excused absences shall:

(a) Include:

   1. Scheduled hours missed due to holidays; and

   2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and

   (b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following verification:

(a) ["KPA-33, Verification of Transportation and Participation in Education or Training Activity"]; or

(b) ["KPA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity"].

Section 3. Exceptions to Program Participation. (1) A Work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:

(a) Is a head of household;

(b) Has not obtained a high school diploma or a GED;

(c) Has not attained twenty (20) years of age; and

(d) Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or

2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.

(2) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:

1. A single custodial parent; and

2. Caring for a child who has not attained twelve (12) months of age.

(b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

   1. Consecutive; or

   2. Cumulative.

(3) A work-eligible individual whose compliance with program participation would make it difficult to escape domestic
violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated. 
(b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appointment for services shall be required for the individual pursuant to 921 KAR 2:006, Section 24.
(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:
   (a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and
   (b) Engaged in work for an average of at least twenty (20) hours per week during the month.
(5) In accordance with 45 C.F.R. 281.2(2)(i)(281-2(2)(2)) the cabinet shall exclude from program participation an individual providing respite care for more than eight (8) consecutive weeks to a disabled family member as verified by the completion of the [41PA-4, Statement of Required Caretaker Services][1].
(6) In accordance with 45 C.F.R. 281.2(2)(i) the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.
(7) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to this section.

Section 4. Program Participation Requirements (1) Assessment:
(a) The cabinet or its designee shall make an assessment of the work-eligible individual’s employability on [41KW-200, Kentucky Works Assessment Form][1].
(b) The cabinet shall request other agencies to assist in the assessment process as needed.
(c) The assessment shall include consideration of:
   1. Basic skills;
   2. Occupational skills; and
   3. Concerns and other relevant factors.
(d) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the [41KW-202, K-TAP Transitional Assistance Agreement][1]. This plan shall contain:
   (a) An employment goal for the individual;
   (b) A service to be provided by the cabinet including child care;
   (c) An activity to be undertaken by the individual to achieve the employment goal; and
   (d) Other needs of the family.
(3) A work-eligible individual shall be notified of a referral to a specific Kentucky Works Program activity on writing on form:
   (a) [41KW-105, Kentucky Works Referral Form (Participant)][1];
   (b) [41PA-218A, New Chance Referral][1]; or
   (c) [41KW-246, WEP Referral Form][1].
(4) In accordance with KRS 205 2007(4), an adult applicant or recipient of the K-TAP benefit group shall register for work using form [41PA-511, Workforce Kentucky Customer Registration][1] except for a member who is:
   (a) Under age eighteen (18);
   (b) Age sixty (60) or over;
   (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
   (d) Receiving benefits based on 100 percent disability;
   (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability or
   (f) Employed thirty (30) hours or more per week at minimum wage or more.
Section 5. Conciliation. (1) Conciliation shall be conducted:
(a) At the request of a work-eligible individual or a Kentucky Works participant;
(b) At the request of a service provider; or
(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.
(2) The conciliation shall be conducted by the cabinet or its designee.
(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.
(4) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form [41KW-204, Conciliation Contact][1].
(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.
(5) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation on form [41KW-205, Conciliation Results][1].

Section 6. Excused from Penalties. (1) A work-eligible individual shall be excused from a penalty for failure to comply with the Kentucky Works Program, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:
(a) The individual is a single custodial parent who has demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:
   1. Cannot locate appropriate child care;
   2. Cannot locate child care at a reasonable distance from home;
   3. Determines the unsuitability of informal child care; or
   4. Cannot locate affordable child care arrangements;
(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;
(c) Child care is terminated through no fault of the individual;
(d) Child care does not meet the needs of the child, for example, a child with a disability;
(e) The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet;
(f) The individual is required to provide constant care, not to exceed eight (8) consecutive weeks, for a family member with a disability as documented by medical evidence using the FA-4;
(g) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;
(h) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:
   1. Consistently not being paid on schedule; or
   2. The presence of a risk to the individual’s health or safety;
   3. Wage rate is decreased subsequent to acceptance of employment; or
   4. The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize, or
   5. The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.
(2) The duration of good cause criteria may vary according to the individual’s circumstance.

Section 7. Penalties. (1) If a work-eligible individual fails to comply with a requirement of the Kentucky Works Program, the recipient shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the work-eligible individual:
(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:
   1. An assessment interview;
   2. An assessment, or
   3. Self-sufficiency plan development including completion of KW-202;
Form PA-33, to ensure the WEP participant's compliance with subsection (7) of this section; 
(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;
(h) Immediately report an injury to the designated representative;
(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;
(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;
(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to the ["KWET-241, WEP Training Site Agreement", except as authorized by law or in writing by a WEP participant;
(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;
(m) Provide:
1. Sufficient training to ensure development of appropriate skills;
2. New task after mastery of a skill; and
3. Adequate participation instruction and supervision at all times;
(n) Provide the participant a safe training place;
(o) Assist a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;
(p) Provide adequate material to complete a training activity in a safe environment; and
(q) Sign form KWEP-241 with the cabinet and the participant containing a statement of.
1. The conditions established by subsections (1) through (10) of this section; and
2. The period covered by the agreement, including the required weekly number of hours of participation.
3. Changes to the KWET-241 shall be established in writing on form ["KW-244, WEP Training Site Agreement Amendment"];
4. A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form ["KW-245, Notice of WEP Discontinuance"];
5. A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KW-105, Kentucky Works Referral Form (Participant)", edition 10/06;
(b) "KW-200, Kentucky Works Assessment Form", edition 10/06;
(c) "KW-202, K-TAP Transitional Assistance Agreement", edition 10/06;
(d) "KW-204, Conciliation Contact", edition 10/06;
(e) "KW-205, Conciliation Results", edition 10/06;
(f) "KW-211, Noncompliance Contact", edition 10/06;
(g) "KW-230, Wage Supplementation Program Participant Agreement", edition 10/06;
(h) "KW-244, WEP Training Site Agreement Amendment", edition 10/06;
(i) "KW-245, Notice of WEP Discontinuance", edition 10/06;
(j) "KW-246, WEP Referral Form", edition 10/06;
(k) "KWET-240, Work Experience Training Program Participant Agreement", edition 10/06;
(l) "KWET-241, WEP Training Site Agreement", edition 10/06;
(m) "PA-4, Statement of Required Caretaker Services", edition
(n) "PA-33, Verification of Transportation and Participation in Education or Training Activity", edition 10/06;
(o) "PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity", edition 10/06;
(p) "PA-218A, New Chance Referral", edition 10/06; and
(q) "PA-511, Workforce Kentucky Customer Registration", edition 11/06.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: September 24, 2008
FILED WITH AGENCY: September 29, 2008 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dainger, DCBS Regulation Coordinator

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the technical requirements of activities allowed under the Kentucky Works Program (KWP).
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.002(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation conforms to the content of the authorizing statutes by establishing the technical requirements and allowed activities of the Kentucky Works Program (KWP). The KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Title IV-A of the Social Security Act (a.k.a., the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619). This administration regulation sets forth these standards in conformity with the Title IV-A or TANF State Plan.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists in the effective administration of the statutes by establishing uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation and penalties for failure to participate without good cause.
(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 Kentucky Works Program is the work program for work-eligible individuals in Kentucky Transitional Assistance Program (K-TAP) cases. This amendment aligns KWP with federal requirements by excluding those individuals who receive Social Security Disability Insurance (SSDI) benefits from participating in Kentucky Works; relaxing restrictions placed on parents who are exempt from participation in KWP due to the care of a disabled family member; converting the ten day excuse policy to an hourly basis for enhanced flexibility; allowing those pursuing a four-year degree to count as participating in the KWP; removing the standard for satisfactory progress as a participation requirement for educational activities; and making technical corrections to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the programmatic changes contained within the new federal regulations implementing the Deficit Reduction Act (DRA) of 2005. The DRA reauthorized the TANF program.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619, Pub.Law 109-171, the Deficit Reduction Act of 2005 and related federal regulations that reauthorized the TANF program.
(d) How the amendment will assist in the effective administration of the statutes: KRS 205.002(2) requires the Cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes technical eligibility requirements for the KWP program. The amendment assists in the effective administration of the statutes through its incorporation of federal requirements necessitated by TANF's reauthorization.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in KWP. As of June 2008, there were 22,972 families receiving K-TAP and 7,640 individuals required to participate in KWP.
(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: No new action is needed by the regulated entities to comply with this administrative amendment.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While the amendment is conforming in nature, there are no anticipated accrued benefits for the identified entities, the amendment provides clarification to impacted entities regarding their participation requirements.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A of the Social Security Act and state general funds used to meet Maintenance of Effort requirements 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 now, or by the change if it is an amendment: There are no increases in fees or funding required with this amendment.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees nor directly or indirectly increase any fees.
(9) TIERING: Is tiering employed? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:
2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.200(7), 205.203
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the Federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different respon-
sibilities 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, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 203.200(2), 203.200(7), 203.2003, 42 U.S.C. 601 to 619, Pub. L. 109-171
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 generate no revenue in the first year or subsequent years.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.
(c) How much will it cost to administer this program for the first year? This program has been operational since October 1996. This amendment will not require any additional cost in the first year and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.
(d) How much will it cost to administer this program for subsequent years? This program has been operational since October 1996. This amendment will not require any additional cost in the first year and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

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

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

STATEMENT OF EMERGENCY
921 KAR 3:030E

The emergency administrative regulation, 921 KAR 3 030E, Financial requirements, is necessary to implement changes mandated by the Food, Conservation, and Energy Act of 2008, which reauthorized the Food Stamp Program nationwide beginning in Federal Fiscal Year 2009. Kentucky must implement these changes through this emergency administrative regulation in order to maintain the agreement that the Commonwealth of Kentucky has with United States Department of Agriculture-Food and Nutrition Services to act in accordance with the provisions of the Food Stamp Act of 1977, as amended. Failure to comply with this agreement and federal legislation will result in federal financial penalties to Kentucky's Food Stamp Program. An ordinary administrative regulation would not allow the agency sufficient time to comply with federal requirements by the October 1, 2008, deadline. This ordinary administrative regulation is not identical to the emergency administrative regulation. The ordinary administrative regulation differs from the emergency administrative regulation in that it adds an additional exclusion of educational assistance for determination of the household's income, eligibility and amount of food stamp allotment. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:030E. Financial requirements.

STATUTORY AUTHORITY: KRS 194A.010, 194A.050(1), 7 C.F.R. 274.1

EFFECTIVE: September 29, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010 requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 274.1 requires the cabinet to administer the Food Stamp Program within the state. This administrative regulation establishes the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program. In addition, 7 U.S.C. 2014 allows states to exclude additional types of income and resources if these specific types of income and resources are not counted in the state's Temporary Assistance for Needy Families (TANF)/TAFP or Medicaid Programs.

Section 1. Financial Eligibility Requirements. (1) As established in 7 C.F.R. 273, promulgated by the Food and Nutrition Service of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:
(a) Income limitations; and
(b) Resource limitations.
(2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income.
(3) The income eligibility standards shall be:
(a) Derived from the federal income poverty guidelines as defined in 42 U.S.C. 9902(2) for the forty-eight (48) contiguous states; and
(b) Adjusted annually each October 1, as published in the Federal Register.

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following:
(1) Wages earned by a household member, including wages received by a striker as defined in 921 KAR 3 035, Section 6(10);
(2) The gross income of a self-employment enterprise, including the total gain from the sale of capital goods or equipment related to the business, excluding the cost of doing business;
(3) Training allowance from vocational and rehabilitative programs recognized by federal, state, or local government, to the extent that they are not reimbursement;
(4) Volunteers in Service to America; (VISTA) payments under 42 U.S.C. 4951 to 4960 shall be considered earned income unless specifically excluded in accordance with 7 C.F.R. 273.3(c)(10)(iv);
(5) The earned or unearned income of an ineligible household member or nonhousehold member as described in 921 KAR 3 035, Section 5(3) and (4);
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(6) Assistance payments from federal or federally-aided public assistance including:
   (a) Supplemental security income or "SSI";
   (b) Kentucky Transitional Assistance Program or "K-TAP" in accordance with 921 KAR 2.016;
   (c) General assistance programs;
   (d) Other assistance programs based on need; or
   (e) Kinship care in accordance with 922 KAR 1.130,
   (7) Annuities;
   (8) Pensions;
   (9) Retirement, veteran's, or disability benefits;
   (10) Worker's or unemployment compensation;
   (11) Strike pay;
   (12) Old-age survivors or Social Security benefits;
   (13) Except as excluded in Section 3(15) of this administrative regulation, foster care payments for a child or adult,
   (14) Gross income derived from rental property, minus the cost of doing business. This income shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;
   (15) Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense;
   (16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;
   (17) Wages received from a TANF funded work program in accordance with 42 U.S.C. 601-619; [A portion of the following that is not excludable as specified in Section 3(6) of this administrative regulation:
   (a) Scholarship;
   (b) Education grant;
   (c) Fellowship;
   (d) Deferred payment education loan;
   (e) Veteran's educational benefit; or
   (f) Income received from a work study program which is not administered by the U.S. Commissioner of Education or the Bureau of Indian Affairs, in accordance with 7 U.S.C. 2014;]
   (18) A payment from:
   (a) A government sponsored program;
   (b) A royalty; or
   (c) Similar direct money payments from a source that may be construed as a gain or benefit;
   (19) Money withdrawn from a trust fund;
   (20) The amount of monthly income deemed to be a sponsored alien as established in 921 KAR 3.035, Section 9(11);
   (21) The portion of means tested assistance monies:
   (a) From e:
      1. Federal welfare program;
      2. State welfare program; or
      3. Local welfare program, and
   (b) Withheld for the purpose of recouping an overpayment resulting from the household's intentional failure to comply with that program's requirements;
   (22) Earnings of an individual who is participating in an on-the-job training program under 29 U.S.C. 2801-2893(29 U.S.C. 2801 et seq.) unless the individual is under:
      (a) Nineteen (19) years of age; and
      (b) The parental control of another adult member; and
   (23) An assistance payment for child care or attendant care:
      (a) Received from an outside source; and
      (b) Paid to one (1) household member:
         1. From another household member; or
         2. On behalf of another household member.

Section 3. Income Exclusions. The following payments shall not be considered as income:
(1) Money:
   (a) Withheld from an assistance payment;
   (b) From earned income;
   (c) From another income source; or
   (d) Received from another income source that is voluntarily or involuntarily returned to repay a prior overpayment received from that income source, except as defined in Section 2(21) of this administrative regulation;
(2) Child support income shall be considered as follows:
   (a) A child support payment shall be excluded if:
      1. Received by a recipient of the K-TAP or Kinship Care Program;
      2. It is transferred to the Child Support Enforcement Program in the Department for Income Support (Division of Child Support) to maintain eligibility in K-TAP or Kinship Care Program; and
   (b) A portion of child support money returned to the household receiving K-TAP or Kinship Care Program benefits by the cabinet shall not be excluded;
   (3) A gain or benefit that is not in the form of money payable directly to the household,
   (4) A money payment that is not legally obligated and otherwise payable directly to a household, but is paid to a third party for a household expense;
   (5) Income:
   (a) Received
      1. In the certification period; and
      2. Too infrequently or irregularly to be reasonably anticipated; and
   (b) Not in excess of thirty (30) dollars per quarter;
   (6) Educational income;
   (a) Including:
      1. A deferred payment educational loan on which repayment does not begin within sixty (60) days after receipt;
      2. A grant;
      3. A scholarship;
      4. A fellowship;
      5. A veteran's educational benefit;
   (b) Income from a work study program administered by the U.S. Commissioner of Education or the Bureau of Indian Affairs, in accordance with 7 U.S.C. 2014; and
   (7) A similar form of income:
   (a) Awarded to a member of a household, as defined in 921 KAR 3.010, Section 1(24), who is enrolled in one (1) of the following recognized institutions:
      1. Institution of postsecondary education;
      2. School for a disabled person;
      3. Vocational education program; or
      4. Program providing for completion of a secondary school diploma or its equivalent;
   (c) To the extent that it does not exceed the amount used for or made available as an allowance as determined by this:
      1. School;
      2. Institution;
      3. Program; or
      4. Grant;
   (d) For payment of:
      1. Tuition;
      2. Transportation;
      3. Miscellaneous personal expense, other than room and board;
      4. An origination fee for an educational loan;
      5. An insurance premium for an educational loan; or
      6. Dependent care, except the costs that exceed the amount excludable from income shall be deducted as defined in Section 5 of this administrative regulation;
   (e) For payment of mandatory fees relating to the course of study, including the rental or purchase of:
      1. Equipment;
      2. Material;
      3. Books; and
      4. Supplies.
   (7) A loan, other than an educational loan on which payment is deferred, from:
      (a) Private individual; or
      (b) Commercial institution;
   (8) A reimbursement for a past or future expense, other than normal living expenses;
   (9) Money received and used for the care and maintenance of a third-party beneficiary who is not a household member;
   (10) The earned income of a child who is:
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(a) A member of the household;
(b) An elementary or secondary school student; and
(c) Age seventeen (17) years or younger;
(11) Money received in the form of a nonrecurring lump-sum payment;
(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, the loss shall be offset against any other countable income in the household;
(13) Income specifically excluded by 7 U.S.C. 2014 from consideration as income for the purpose of determining Food Stamp Program eligibility;
(14) An energy assistance payment or allowance that is made.
(a) In accordance with any federal law, except 42 U.S.C. 601 to 619, including a utility reimbursement made by:
1. The Department of Housing and Urban Development;
2. Rural and Economic Community Development; and
(b) For the purpose of a one (1) time payment or allowance made as defined in a federal or state law for the costs of:
   1. Weatherization;
   2. Emergency repair; or
   3. Replacement of:
      a. An unsafe or inoperative furnace; or
      b. Other heating or cooling device;
(15) A cash donation based on need received from a nonprofit charitable organization, not to exceed $300 in a federal fiscal year quarter;
(16) A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;
(17) Money received under 26 U.S.C. 3507 of the Internal Revenue code, as an advanced payment of earned income credit;
(18) Interest or dividend income, in accordance with 7 U.S.C. 2014;
(19) Additional wages received by a member of the military while deployed to a designated combat zone, in accordance with Z U.S.C. 2014(Pub. L. 109-447);
(20) Veteran’s benefits provided to children with identified birth defects born to female Vietnam veterans, in accordance with 38 U.S.C. 1823;
(21) Income from AmeriCorps programs, except for Volunteers in Service to America, as specified in Section 2(4) of the administrative regulation, in accordance with 42 U.S.C. 12501-12604 etc.;
(22) Income from a Youthbuild program, unless the income is from on-the-job training, as defined in Section 2 of this administrative regulation, in accordance with 29 U.S.C. 2931; and

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to a household whose income falls at or below the applicable standards as established by the Food and Nutrition Service in 7 C.F.R. 273 that are set forth below:
(1) A household that contains a member who is elderly or has a disability as defined in 921 KAR 3:010, Section 1(11) or (13), shall have its net income compared to 100 percent of the federal income poverty guidelines.
(2) A household in which a member receives or is authorized to receive cash, in-kind, or other benefits funded under TANF[Temporary Assistance to Needy Families, or "TANF"] pursuant to 42 U.S.C. 601-619[42 U.S.C. 601-609], shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(4).
(3) A household in which all members are recipients of SSI shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(3).
(4) Other households shall have their:
   1. Gross income compared to 130 percent of the federal income poverty guidelines; and
   2. Net income compared to 100 percent of the federal income poverty guidelines.

(b) A household’s gross income as calculated pursuant to paragraph (a) of this subsection shall be the household’s total income.
   1. After excluded income has been disregarded in accordance with Section 3 of this administrative regulation and
   2. Before any deductions in accordance with Section 5 of this administrative regulation have been made [Other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.]

Section 5. Income Deductions. The following shall be allowable income deductions:
(1) A monthly standard deduction per household, based on household size, as established in 7 U.S.C. 2014, that shall be periodically adjusted by the Food and Nutrition Service to reflect a change in the cost of living for a prior period of time as determined by the Food and Nutrition Service pursuant to 7 C.F.R. 273;
(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;
(3) A payment:
   (a) For the actual cost for the care of:
      1. A child, or
      2. Other dependent; and
   (b) Not to exceed:
      1. $300 per month per dependent child under age two (2),
      2. $175 per month per each other dependent; and
   (c) Necessary for a household member to
      1. Seek, accept, or continue employment;
      2. Attend training;
      3. Pursue education preparatory to employment;
      4. The cabled television [A homeless standard allowance of a shelter expense for a household in which all members are homeless and are not receiving free shelter throughout the calendar month, unless the household verifies higher expenses];
(5) An allowable medical expense in excess of thirty-five (35) dollars per month incurred by a household member who meets the definition of being elderly or having a disability as defined in 921 KAR 3:010, Section 1(11) and (13):
   (a) Including:
      1. Medical and dental care;
      2. Hospitalization or outpatient treatment and nursing care;
      3. Medication and medical supplies;
      4. A health insurance premium;
      5. A hospitalization insurance premium;
      6. Dentures, a hearing aid, eyeglasses, prosthetics; or
      7. Similar medical expense; and
   (b) Excluding special diet cost.
(6) The child support payment made by a household member shall be allowed as a deduction if:
   (a) The household member is legally obligated to pay child support; and
   (b) Verification is provided showing a payment is currently being made.

Section 6. Monthly Shelter Cost Deduction. (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household’s income after allowable deductions have been made.
(2) The shelter deduction shall not exceed the current shelter maximum, except that a household shall not be subject to the maximum if a member is:
   (a) Elderly; or
   (b) Disabled.
(3) The excess shelter maximum shall be adjusted periodically by the Food and Nutrition Service to reflect change in the cost of living.
(4) Allowable monthly shelter expense shall include the following:
   (a) Continuing charge for the shelter occupied by the household including:
VOLUME 35, NUMBER 5 - NOVEMBER 1, 2008

1. Rent;
2. Mortgage;
3. Payment on mobile home loan;
4. Condominium and association fees;
5. Interest on a payment; and
6. Similar charge leading to ownership of the shelter;
   (b) Property tax;
   (c) State and local assessment;
   (d) Insurance on the structure itself;
   (e) The cost of:
      1. Heating and cooking fuel;
      2. Cooling;
      3. Electricity;
      4. Water and sewage;
      5. Garbage and trash collection fee;
      6. Telephone standard deduction; and
7. A fee charged by a utility provider for the initial installation of the utility;
   (f) The shelter cost for the home if:
      1. Temporarily unoccupied by the household because of:
         a. Employment or training away from home;
         b. Illness, or
         c. Abandonment caused by a natural disaster or casualty loss;
      2. The current occupant is not claiming shelter cost for food stamp purpose; and
3. The home is not leased or rented during the absence of the household; and
   (g) A charge for the repair of the home if substantially damaged or destroyed by fire, flood, or other natural disaster, except to the extent the cost is reimbursed by:
      1. A private or public relief agency;
      2. Insurance, or
      3. A similar source.
   (h) The standard utility allowance shall be used to calculate shelter cost for a household.
   (i) Receiving Low Income Home Energy Assistance Program benefits; or
   (j) Incuring cost, separate from its rent or mortgage payment, for:
      1. Heating; or
      2. Cooling (by air conditioning unit only).
   (k) The standard utility allowance shall be adjusted periodical-
   (l) If the household is not entitled to the utility standard or home energy standard allowance, it shall be given the basic utility allowance in accordance with 7 U.S.C. 2004, if the household is billed for two (2) of the following:
      (a) Electric (including heating and noncooling);
      (b) Water or sewage;
      (c) Garbage or trash,
      (d) Cooking fuel, or
      (e) Telephone service.
   (m) The basic utility allowance shall be adjusted annually.
   (n) A household whose only expense is for telephone service shall be given a telephone standard.
   (10) A household not entitled to a standard specified in subsection (7) or (9) of this section may use actual utility expense to calculate shelter deduction.

Section 7. Resources. (1) Uniform national resource standards of eligibility shall be utilized pursuant to 7 C.F.R. 273.8.
(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 8 of this administrative regulation exceed:
   (a) $3000 for a household member:
      1. With a disability as defined in 921 KAR 3:10, Section 1(11); or
   (b) $2000 for any other household.
   (3) A household that is categorically eligible in accordance with 921 KAR 3:030, Section 6 shall meet the food stamp resource requirement.

Section 8. Exempt Resources. The following resources shall not be considered in determining eligibility:
(1) All real estate, in accordance with 7 U.S.C. 2004;
(2) Household goods;
(3) Personal effects;
(4) A burial plot;
(5) The cash value of life insurance policies;
(6) In accordance with 7 U.S.C. 2004;
   (a) A tax-preferred retirement account;
   (b) A prepaid burial account,
   (c) A licensed or unlicensed vehicle;
   (d) A recreational vehicle;
   (e) A resource deemed to an alien from a sponsor or spouse of a sponsor;
   (f) Principal and accrued interest of an irrevocable trust during a period of unavailability;
   (g) A tax-preferred educational account; and
   (h) Another resource that is excluded for food stamp purposes:
   (i) Funds in an individual retirement account, pension, retirement, or deferred compensation during the period of unavailability;
   (j) A prepaid burial account, in accordance with 7 U.S.C. 2004;
   (k) In accordance with 7 U.S.C. 2004—1 a licensed or unlicensed vehicle;
   (l) A recreational vehicle, in accordance with 7 U.S.C. 2004;
   (m) A resource deemed to an alien from a sponsor or spouse of a sponsor, in accordance with 7 U.S.C. 2004;
   (n) Principal and accrued interest of an irrevocable trust during a period of unavailability;
   (o) A governmental payment that is designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction and, if funds are not used as intended;
   (p) A resource, of which the cash value is not accessible to the household;
   (q) A resource that has been prorated as income;
   (r) A resource that is excluded for food stamp purposes in accordance with 7 U.S.C. 2004;
   (s) Income that is withheld by the employer to pay a certain expense directly to a third party as a vendor payment, to the extent that the remainder of the withheld income is not accessible to the household at the end of the year; and
   (t) The earned income tax credit income received by a member of the household for a period of twelve (12) months from receipt if the member was participating in the Food Stamp Pro-
      (a) At the time the credit was received; and
      (b) Continuously during the twelve (12) month period of exclusion.

Section 9. Transfer of Resources. A household that has transferred a resource knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 10. Failure to Comply with Other Programs. (1) Except as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.
(2) If the benefits of a household are reduced as defined in a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedure as defined in 921 KAR 3:042, Section 7.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: September 24, 2008
FILED WITH LRC: September 29, 2008 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deanger
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the financial eligibility requirements used by the Cabinet in the administration and provision of Kentucky's Food Stamp Program.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards of financial eligibility for the Food Stamp Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the financial eligibility requirements for Kentucky's Food Stamp Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the financial eligibility requirements used by the Cabinet in the administration and provision of Kentucky's Food Stamp Program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
This amendment modifies financial eligibility requirements for Kentucky's Food Stamp Program by removing the cap on dependent deductions; and excluding tax-preferred retirement and educational accounts.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to comply with the federal requirements of the Food, Conservation, and Energy Act of 2008.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by modifying Kentucky's Food Stamp Program's financial eligibility requirements to adhere to the Food Stamp Act of 1977 as amended by the Food, Conservation, and Energy Act of 2008.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring congruency with, and timely implementation of, recently enacted federal legislation impacting Kentucky's Food Stamp Program's financial eligibility requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants and recipients participating in the Food Stamp Program in the Commonwealth of Kentucky are affected by this administrative regulation. There are approximately 269,876 households and 639,394 individuals currently participating.
(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 not require any additional actions on the part of Food Stamp Program applicants or participants.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to a Food Stamp Program applicant or recipient.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Food Stamp Program applicants and recipients will benefit from the regulatory amendment through its relaxation of financial eligibility requirements as authorized under the Food, Conservation, and Energy Act of 2008.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional state funding is required.
(b) On a continuing basis: No additional state funding is required.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Food Stamp Program benefits are 100 percent federally funded through the Department of Agriculture. Program administration is funded fifty (50) percent federal and fifty (50) percent state, which has been appropriated in the enacted budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4
4. Will this administrative regulation impose stricter requirements, or additional different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will not impose stricter requirements, or additional different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional different responsibilities or requirements. This amendment does not impose a stricter standard, or additional different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that relates or authorizes the action taken by the administrative regulation. KRS 194A.010, 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2014, P.L. 110-246.
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 state or local government during the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government in subsequent years.
(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this administrative regulation for the first year.
(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this administrative regulation 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 (+/-):
STATEMENT OF EMERGENCY
921 KAR 3:045E

The emergency administrative regulation, 921 KAR 3:045E, issuance procedures, is necessary to implement changes mandated by the Food, Conservation, and Energy Act of 2008, which reauthorized the Food Stamp Program nationwide beginning in Federal Fiscal Year 2009. Kentucky must implement these changes through this emergency administrative regulation in order to maintain the agreement that the Commonwealth of Kentucky has with United States Department of Agriculture-Food and Nutrition Services to act in accordance with the provisions of the Food Stamp Act of 1977, as amended. Failure to comply with this agreement and federal legislation will result in federal financial penalties to Kentucky’s Food Stamp Program. An ordinary administrative regulation would not allow the agency sufficient time to comply with federal requirements by the October 1, 2008, deadline. 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
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:045E. Issuance procedures.

RELATES TO: 7 C.F.R. 274.2, 274.3, 274.4, 274.6, Pub.L. 110-246

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 274.12

EFFECTIVE: September 29, 2008

NECESSITY, FUNCTION, AND CONFORMITY. 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Food Stamp Program within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The cabinet shall follow procedures established in 7 C.F.R. 274.12 in the operation of an electronic benefit transfer or "EBT" system. This administrative regulation establishes issuance procedures used by the cabinet in the administration of the Food Stamp Program.

Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits to eligible households.

(2) In issuing benefits the cabinet shall ensure that:
   (a) Only certified households receive benefits;
   (b) Program benefits are distributed in the correct amounts; and
   (c) Benefit issuance and reconciliation activities are properly conducted and accurately reported to the Food and Nutrition Service.

(3) The cabinet shall advise the recipient at time of application that
   (a) After twelve (12) months of EBT account inactivity, unused benefits shall be expunged in accordance with Section 5 of this administrative regulation; and
   (b) Expunged benefits shall be:
      1. Applied for benefit overpayments in accordance with 921 KAR 3:050; or
      2. Returned to the Food and Nutrition Service of the U.S. Department of Agriculture.

(4) The cabinet shall maintain issuance records for a period of three (3) years from the month of origin.

Section 2. Benefit Delivery. (1) Benefits shall be provided to an eligible household through an EBT system.

(2) An EBT card and instructions for use[a PIN] shall be mailed:
   (a) Directly to each eligible household; or
   (b) To the local office for pick up, if requested by the household.

Section 3. Benefit Availability. (1) Benefits shall be available to a household the day after an approval is processed, if the case is:
   (a) New application;
   (b) Reapplication; or
   (c) Recertification, which is:
      1. Initiated after the 15th day of the month; and
      2. Approved during the benefit month.

(2) An ongoing case shall have benefits credited to the EBT account and available to the household within the first ten (10) days of the benefit month.

Section 4. EBT Card Replacement. (1) The cabinet shall provide a replacement EBT card to a household within five (5) days, if the EBT card is reported:
   (a) Lost;
   (b) Stolen; or
   (c) Damaged.

(2) An EBT card shall be deactivated when a household reports the need for card replacement.

Section 5. Benefit Replacement. (1) After the household receives an EBT card, if the EBT card is lost or stolen and the EBT account is reduced, the cabinet shall not provide replacement benefits.

(2) If food purchased with food stamp benefits is destroyed in a household disadvantage, the cabinet shall provide replacement benefits if:
   (a) The loss is reported:
      1. Orally or in writing; and
      2. Within ten (10) days of the household disadvantage; and
   (b) A household member or authorized representative signs a statement attesting to the loss.

(3) If the household is eligible for replacement benefits, the replacement shall equal the:
   (a) Amount of the loss to the household, not to exceed the maximum of one (1) month’s benefits for the household requesting replacement; or
   (b) Full value of the benefit, if the replacement includes restored benefits.

(4) The cabinet shall not provide a replacement due to a household disadvantage if:
   (a) A disaster declaration has been issued by FNS, and
   (b) The household is eligible for disaster food stamp benefits.

(5) There is no limit on the number of benefit replacements for food:
   (a) Purchased with food stamp benefits; and
   (b) Destroyed in a household disadvantage.

(6) If available documentation indicates that a household’s request for benefit replacement appears fraudulent, the cabinet shall:
   (a) Deny the replacement, or
   (b) Delay the replacement; and
   (c) Inform the household:
      1. Of its right to a fair hearing to contest the denial or delay of a replacement; and
      2. That a replacement shall not be made while the denial or delay is being appealed.

Section 6. Account Inactivity. (1) If an EBT account has not been debited in twelve (12) consecutive months, the cabinet shall:
   (a) Expunge a monthly benefit on a monthly basis as each
      individual benefit month reaches a date that is twelve (12) months of the past; and

- 1147 -
(b) Notify the household in writing:
1. That the household's EBT account has not been debited in the last nine (12) months; and
2. Of the amount of EBT benefits that have been expunged.
(2) If a recipient debits the EBT account, the expungement process shall cease.
(3) Expunged benefits shall not be retrieved.
(4) An EBT card shall be deactivated if, within a ten- (10) month period, the EBT account has not been:
(a) Credited, or
(b) Debited.
(5) An EBT account record is removed if, within a twelve- (12) month period, the EBT account has not been:
(a) Credited, or
(b) Debited.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: September 24, 2008
FILED WITH LPC: September 29, 2008 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger
(1) Provide a brief summary of:
(a) What this administrative regulation does. This administrative regulation sets forth the procedures for benefit delivery used by the Cabinet in the administration of the Food Stamp Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for Electronic Benefit Transfer (EBT) operation in the administration of the Food Stamp Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: In accordance with KRS 194A.050(1), the Cabinet has responsibility under 7 C.F.R 271.4 to administer the Food Stamp Program for Kentucky and deliver benefits by an EBT system per 7 C.F.R. 274.12. The administrative regulation conforms to the authorizing statutes by prescribing the EBT system for Kentucky's Food Stamp program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the issuance procedures (EBT) for Kentucky's Food Stamp Program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by extending the timeframe benefits are expunged from an unused EBT account from ten to twelve months, and removing obsolete language concerning the deactivation of an EBT card and EBT account records.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with requirements of the Food, Conservation, and Energy Act of 2008 and to remove language relating to EBT cards that is no longer applicable.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by aligning benefit policy with federal requirements.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statute by complying with the requirements of the Food, Conservation, and Energy Act of 2008.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants and recipients participating in the Food Stamp Program in the Commonwealth are affected by this administrative regulation. There are approximately 316,878 households (639,394 individuals) currently participating.
(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 not require any additional actions on the part of Food Stamp Program applicants or recipients.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? None of the amendment nor the administrative regulation involves a cost to a Food Stamp Program applicants or recipients. If there is a cost to compliance, what benefits accrue to the entities identified in question (3)? Food Stamp Program recipients may benefit from the amendment to the administrative regulation through its allowance of three additional months to use benefits previously credited to their EBT account, prior to the benefits being expunged.
(c) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation:
(1) Initial: This administrative regulation will initially cost the administrative body approximately six hundred dollars ($600.00) to implement this change. This is a service charge from JP Morgan Chase, EBT contractor, to make the necessary changes to their computer system for implementation.
(b) On a continuing basis:
(c) No additional funding is required.
(d) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Food Stamp Program benefits are 100 percent federal funded through the Department of Agriculture. Program administrative costs are funded fifty (50) percent federal and fifty (50) percent state, which have been appropriated in the enacted budget.
(5) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding is necessary to implement the administrative regulation.
(6) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increases any fees.
(7) TIERING: Is being applied? No, tiering is not applied because this administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 274.12
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation are applied in a like manner on a statewide basis in accordance with 7 C.F.R. 274.12.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, that those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for
Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190A.050 (1), 7 C.F.R. 271. 4, 274.12, P.L. 110-246

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 state or local government during the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will initially cost the administrative body approximately six hundred dollars ($600.00) to administer this change.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this administrative regulation 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:
KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 14, 2008)

31 KAR 4:140. Submitting a Federal Post Card Application and absentee ballot request electronically.[Submitting absentee ballot application to the Department of Defense Interim Voting Assistance System (IVAS) by electronic mail.]

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S.C. 1973f-1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973f, authorizes the Department of Defense to implement a voting assistance system for the purpose of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing [e-mail] technology. This administrative regulation implements a system for local elections officials to participate in the Department of Defense’s system (IVAS).

Section 1. Definitions. (1) “Absentee ballot application” means the Federal Post Card Application, Standard Form 76A, electronically sent to the county clerk from IVAPS (IVAPS) to the county clerk from IVAPS.

(2) “IVAP” means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA.

(3) “Instructions to voter sheet” means the “Instructions for Voting to a Qualified Kentucky Resident Who Has Been Exiled or Electronically Sent an Absentee Ballot.” (SBE 46A IVAS means the Department of Defense Interim Voting Assistance System.)

(4) “Registered voter” means a resident of Kentucky who is eligible to vote and is an active member of the Armed Forces of the United States or a resident of Kentucky residing outside the United States.

(5) “Voter verification sheet” means the SBE 46B/46A, the form registered voter signs and includes the voter assistance oath.

Section 2. Any county clerk’s office that has online capabilities shall follow the process established by this administrative regulation in administering the Department of Defense’s system through IVAP for the electronic transmission of Federal Post Card Applications and absentee ballot requests.

Section 3. Processing a Completed Application Electronically.[By Electronic Mail. (1) If notification of a voter’s absentee ballot application is received electronically from IVAPS by electronic mail from IVAPS less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If notification of a voter’s completed absentee ballot application is received electronically from IVAPS by electronic mail from IVAPS not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall verify the voter’s eligibility. If the voter is eligible to vote in the current election, the county clerk shall prepare an electronic copy, in a manner prescribed by IVAPS, of the original absentee ballot. The original absentee ballot is then marked “Electronically Sent to IVAPS [Mailed to IVAPS]” and retained.

(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent electronically to IVAPS (IVAPS) to the county clerk from IVAPS, along with the instructions to voter sheet and the voter verification sheet.

Section 4. Section 3. Voter’s Instructions on Completing an Electronic Absentee Ballot Received From IVAPS: (1) When a voter receives an absentee ballot electronically from IVAPS (IVAPS), the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in the outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print “Absentee Ballot” on the front of the outer envelope, but shall not obstruct the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received by 6 p.m., local time on Election Day (election day), to the county clerk through the mail in order to be counted.

Section 5. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General’s Office to make a complaint of a violation in accordance with KRS 116.995, 117.025, or 119.265.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “Federal Post Card Application”, Standard Form 76A (Rev. 10-2005);

(b) SBE 46A — “Instructions for Voting to a Qualified Kentucky Resident Who Has Been Exiled or Electronically Sent an Absentee Ballot” (August 2008 edition) SBE 46A — “Instructions for Voting to a Qualified Kentucky Resident Who Has Been Exiled an Absentee Ballot” (December 2005 edition); and

(c) SBE 46B - “Voter Verification Sheet” (December 2005 edition).

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

TREY GRAYSON, Chair
JACK CONWAY, Attorney General
APPROVED BY AGENCY: August 7, 2008
FILED WITH LRC: August 8, 2008 at 12 p.m.
CONTACT PERS: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, October 14, 2008)

200 KAR 5:390. Registration to collect Kentucky sales and use tax.

 RELATES TO: KRS 45A.067, 139.200, 139.310, 139.540, 139.550[2008 Ky.-Act.-ch.-43 Sec.-1, KRS Chapter 139]

 STATUTORY AUTHORITY: KRS 45A.067[2](2008 Ky.-Act.-ch.-43 Sec.-1) requires a person contracting with the Commonwealth to register with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and KRS 45A.067[5](2008 Ky.-Act.-ch.-43 Sec.-1) authorizes the secretary of the Finance and Administration Cabinet to promulgate an administrative regulation to establish the procedure for ensuring compliance. This administrative regulation establishes the registration procedure for ensuring compliance.

Section 1. (1) Any person awarded a contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200 and 139.310 shall submit to the contracting agency, prior to execution of a contract:

(a) A copy of the appropriate sales and use tax permit or permit update form, using Form 51A101(a), (b), (c), or (d), which are Form 51A101-Kentucky Sales and Use Tax Permit, which is incorporated by reference in KRS 139.302, for the person and each of its affiliates if they are registered with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139; and

(b) Form 10A100, Kentucky Tax Registration Application, which is incorporated by reference in KRS 139.301, for the person and each of its affiliates, if not registered; and

(c) Form 10A105, State-Vendor Eligibility Request Form for the person and each of its affiliates.

(2) The time frame for submission of the documentation required by subsection (1) shall be set by the contracting agency in the bid documents.

(3) If a person or an affiliate thereof is not registered but an application for registration is made, any contract awarded to the person shall be conditional upon the registration process being completed time the Commonwealth may grant a conditional award of contract while the application is being processed.

(4) The person and each of its affiliates shall remain registered for the duration of any contract awarded.

Section 2. Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated, unless the secretary of the Finance and Administration Cabinet, or his designee, makes a written determination that continuation of the procurement is necessary to protect substantial interests of the Commonwealth.


(2) The material may be inspected, copied, or obtained subject to applicable copyright law, at the Department of Revenue, 601 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

JONATHAN MILLER, Secretary
APPROVED BY AGENCY: July 15, 2008
FILED WITH LRC: July 17, 2008 at 3 p.m.
CONTACT PERSON: Angela C. Robinson, Staff Assistant, Finance and Administration Cabinet, Room 093 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-8649, fax (502) 564-3994.

201 KAR 1:160. Peer reviews.

 RELATES TO: KRS 325.301(6)[6]

 STATUTORY AUTHORITY: KRS 325.240(2), 325.301(6)[6]

 NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.301(6) requires a firm that performs an audit, review, or compilation to enroll in and complete an approved peer review program. (Establishes a new public accounting firm review standards.) This administrative regulation establishes the standards and procedures that a CPA firm must follow to comply with the requirements of KRS 325.301(6) [obtain a peer review].

Section 1. Definition [Definitions]. "Sponsoring organization" means an entity administering (sponsoring) a peer review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" of the American Institute of Certified Public Accountants.

Section 2. (1)(a) When a firm applies to receive an initial license it shall advise the board if it performs audits, reviews, or compilations. A firm that indicates it is going to perform one of those services shall submit a license application:

1. Proof from a sponsoring organization that it is currently enrolled in a peer review program; and

2. A copy of the firm's most recent peer review report that was received by the board within three (3) years prior to submitting the application. If the firm has not received a peer review report within the three (3) year time period it shall notify the board of that fact.

(b) Failure to submit proof of enrollment and, if applicable, a copy of the peer review report shall result in the:

1. Application being ineligible for consideration until proof of enrollment and, if applicable, the peer review report is received by the board; and

2. The firm being prohibited from providing any audit, review, or compilation services.

(c) A firm that is applying for an initial license that received an adverse, fail, second successive modified or second successive pass with deficiencies report within three (3) years prior to submitting the application shall submit with its license application a copy of:

(a) The firm's written response to any of the reports listed in (c)(1) that was sent to the sponsoring organization.

(b) A letter from the firm that describes the current status of deficiencies that comprised the basis for any of the reports listed in (c)(1).

(c) The board shall review and consider any of the reports listed in (c)(1), the firm's response, and the letter submitted by the firm to determine if the firm shall be issued a license.

(d) If the board decides to issue a license it may impose restrictions on the firm after taking into consideration the reported deficiencies and any remedial action since the issuance of any of the reports listed in (c)(1).

Section 3. (1)(a) On or after the effective date of this administrative regulation of the board shall review the board records and determine if a firm with a current license is required to be enrolled in a peer review program. If staff determines the firm shall be or is currently enrolled in a peer review program a letter shall be sent to the firm manager advising him or her to submit to the board a copy of its most recent peer review report and letter of acceptance within thirty (30) days from receipt of the letter. Failure to submit a copy of its most recent peer review report and letter of acceptance shall result in the board initiating disciplinary action against the firm's license.

(b) Staff of the board shall review every peer review report and acceptance letter when they are received in the board office. A report characterized as unmodified, pass, or as modified or pass with deficiencies rather of which is the second successive report shall be discarded according to the board's record retention schedule. An adverse, fail, or a second successive modified or pass
with deficiencies peer review report and the firm's responses to the report shall be presented to the board for review and determination of any action to be taken against the firm after taking into consideration:

1. The deficiencies described in the report;
2. The firm's written response to the report that was sent to the sponsoring organization;
3. A letter from the firm that describes the current status of deficiencies that comprised the basis for the report; and
4. Any remedial action instituted by the firm since the issuance of the report.

Section 4. (1) Upon completion of the process prescribed in Section 3 of this administrative regulation, when in the future a firm receives a peer review report, the firm shall provide the board with a copy of the report within fifteen (15) business days of receiving the report.

(2) If the report is classified as pass, unmodified, or either pass with deficiencies or modified but neither is a second successive report no further action on the part of the firm or the board is required. Board staff shall dispose of the documents according to its retention schedule.

(3) If the report is classified as adverse, fail, or is a second successive report classified as pass with deficiencies or modified the firm shall submit the acceptance letter for any of the reports from the sponsoring organization to the board for review and determination of any action to be taken against the firm after taking into consideration:

(a) The deficiencies described in the report;
(b) The firm's written response to the report that was sent to the sponsoring organization;
(c) A letter from the firm that describes the current status of deficiencies that comprised the basis for the report; and
(d) Any remedial action instituted by the firm since the issuance of the report.

Section 5. If a firm is granted an extension of time to complete the peer review process, the firm shall immediately submit to the board a copy of a letter from the sponsoring organization that granted the extension.

Section 6. (1) A sponsoring organization shall report to the board on a quarterly basis the name of every firm enrolled in the peer review program and the name of every firm dropped or terminated from the program since the last quarterly report was provided by the sponsoring organization.

(2) A sponsoring organization shall bear the costs of verifying that it is operating the program in compliance with the standards for performing peer reviews.

Section 7. The board shall review the records to determine if a firm that performs audits, reviews, or compilations has submitted proof that it is enrolled and has completed a peer review program administered by a sponsoring organization.

(1) If a firm has not been enrolled, a request shall be issued to the firm advising it that it shall enroll in a peer review program operated by a sponsoring organization within forty-five (45) days of the date of the letter.

(2) Within twenty-four (24) months of the date of enrollment in a peer review program conducted by a sponsoring organization, the firm shall submit to the board:

(a) A letter from the sponsoring organization indicating satisfactory completion of a peer review; or
(b) The peer review report.

(3) A sponsoring organization shall report to the board on a semiannual basis the names of the firms enrolled in the peer review program.

(4) A sponsoring organization shall bear the costs of verifying compliance with the standards for performing peer reviews.

Section 8. (1) Enrolled in an approved peer review program; and

(2) Submitted to the board a letter of enrollment in an approved peer review program from a sponsoring organization.

Section 9. Exclusion from Peer Review. The following report or procedure shall be excluded from the peer review process:

(1) A proposal or other communication that describes the work proposed by a firm or its employees that is a prerequisite to deciding whether to perform an audit, review or compilation of financial statements;

(2) A letter of engagement or other information prepared by a firm in accordance with the Statements on Standards for Accounting and Review Services (SSARS) No. 6 which solely involves preparing and completing financial statements for management use only as described in SSARS 6.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Performing and Reporting on Peer Reviews," January 1, 2005; and

(b) "Statements on Standards for Accounting and Review Services No. 6," June 31, 2000 (June 1, 1996), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the office of the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. These standards are also located on a website maintained by the American Institute of Certified Public Accountants at www.aicpa.org.

REBECCA PHILLIPS, CPA, President
APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 15, 2008 at 11 a.m.
CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Landscape Architects
(As Amended at ARRS, October 14, 2008)

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.070, 323A.100(1), (4)
STATUTORY AUTHORITY: KRS 323A.060(3,23A.070(1), 323A.100(1), 323A.210(2)(c)
NECESSITY, FUNCTION, AND CONFORMITY: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid as applicable:

(1) Renewal fees:

(a) Active license fee—$3170.

(b) Inactive license fee—$150 (twenty-five [25] dollars).

(2) Duplicate certificate: twenty five (25) dollars [ten (10) dollars].

(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(1).

(5) Rehearing fee: $170.

(6) Issuance of a license on reciprocity basis: $250.

(7) Examination:

(a) Processing fee. A $100 nonrefundable processing fee shall be submitted with a new application for examination.

(b) Examination sections:

1. Section C: $225. [Section A; seventy-five (75) dollars][.

2. Section E: $250. [Section B; $110 dollar][.

3. Section C: $250.

4. Section D: $125.

5. Section E: $250.

TONY BARRETT, President
APPROVED BY AGENCY: July 8, 2008
FILED WITH LRC: July 10, 2008 at 1 p.m.
CONTACT PERSON: Jane Gardner, Executive Director, Board of Examiners and Registration of Landscape Architects, Spalding Administrative Building, Suite 106, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2756, fax (859) 246-2754.

GENERAL GOVERNMENT CABINET
Board of Certification of Alcohol and Drug Counselors
(As Amended at ARRS, October 14, 2008)

201 KAR 35:060. 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 if 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. (1) Voluntary inactive status shall be [designed] 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.

(2) The Kentucky Board of Certification of Alcohol and Drug Counselors shall grant inactive status if one (1) or more of the following conditions apply:

[(a) (1) Medical problems;
(b) Maternity or paternity; or;
(c) Education;
(d) Military service; or;
(e) Family or personal issues;
(f) Other valid reason;]

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 reactivation fee as established in 201 KAR 35:020, Section 7.

(2) The request for voluntary inactive status shall 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.

The applicant shall be notified of the board’s decision not 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 shall not use the initials of a certified counselor (e.g. CADO).[.

(3) Individuals on voluntary inactive status shall not be eligible for reciprocity.

(4) Individuals on voluntary inactive status shall subscribe to any of the applicable aspects of the Kentucky Code of Ethics established 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 established in 201 KAR 35:020, Section 7.

(6) Failure to notify the board within thirty (30) days of returning to work shall constitute a violation of the Kentucky Board of Certification of Alcohol and Drug Counselors Code of Ethics, Incorporated by reference in 201 KAR 35:040, 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 established in 201 KAR 35:020, Section 7.

(2) If the request for reactivation shall be considered at the next regularly scheduled meeting of the Kentucky Board of Certification of Alcohol and Drug Counselors.

(b)(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.
CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4618.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, October 14, 2008)

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

VOLUME 35, NUMBER 5 – NOVEMBER 1, 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 advanced emergency medical technicians, also known as "AEMT-Paramedic".

Section 1. Definition. "Advanced emergency medical technician" or "AEMT" means the Intermediate Level of emergency medical technicians.

Section 2. Student Eligibility. Individuals shall be eligible to enroll as a student in an AEMT training program if the applicant:
(a) Is at least eighteen (18) years of age;
(b) Holds a current unrestricted certification as a nationally registered emergency medical technician-Basic or unrestricted certification as a Kentucky Emergency Medical Technician-Basic;
(c) Holds a college degree, high school diploma, GED, or equivalent;
(d) 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;
(e) Is not subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;
(f) Meets any additional requirements established by the EMS-TEI; and
(g) Holds a valid motor vehicle operators' license from a state or territory in the United States.

Section 3. 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 1989 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:
   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.

Section 4. Expiration of Certification. (1) Initial certification periods shall be for a minimum of twelve (12) and 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 himself or herself (himself or herself) out to be an AEMT in accordance with KRS 311A.050.

Section 5. 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 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;
(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/85 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 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 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 any extension within sixty (60) days of release of active duty.
(6) The KBEAMS 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 6. 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 "Application for 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 in 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, or entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense, and
(g) Not have been subjected to discipline that would prevent reciprocity at the time of application;
[(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 7[-8]- Exemptions from AEMT Administrative Regulations. Certification requirements for an EMT 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 a mass casualty or disaster type situation; or
(2) An EMT 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 9[-7] Reinstatement of Certification. (1) An AEMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate his or her certificate by submitting:
(a) A completed and signed "Advanced Emergency Medical Technician Certification Reinstatement Application;"
(b) Written evidence of current completion of current 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 the application for reinstatement of the AEMT continuing education requirement as outlined in Section 5(2)(b) of this administrative regulation; and
(g) 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 his or her 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, or 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 9[5] Public Notice of Negative Action. The KBECS office shall cause to be published, in the KBECS 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 his or her certification revoked.

Section 10[6] Temporary Certificate. (1) KBECS 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 a AEMT, EMT-Intermediate/83, or EMT-Intermediate/90;
(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 criminal background check from the individual's state of residence;
(i) Is not an individual who has been convicted of, or 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 has a certificate 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 reissued or renewed.

Section 11. Except for individuals that have completed a board-approved Advanced EMT pilot program and who meet the requirements of this administrative regulation, the requirements of this administrative regulation shall apply on January 31, 2009. Effective Date. This administrative regulation shall become effective immediately upon passage for those
Section 12.[#1-1 Incorporation by Reference. (1) The following material is incorporated by reference: (a) The United States Department of Transportation, National Highway Traffic Administration, "1985 or 1999 National Standard Curriculum for Emergency Medical Technician-Intermediate", 1985 or 1999 Edition; (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 2006; (d) The "Universal Application for Renewal", July 2008; (e) "Advanced EMT Recertification Report" (October 2008) The Kentucky Board of Emergency Medical Services. AESM Minimum Continuing Education Requirements. Total Contact Hours, July 2008; (f) The "Advanced Emergency Medical Technician Certification Reinstatement Application", July 2006; and (g) The "Application for Temporary Certificate", July 2006. (2) This material may be inspected, copied, or [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 LCFS: July 11, 2008 at 11 a.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.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (As Amended at AARRS, October 14, 2008)

202 KAR 7:510. Air ambulance services.

RELATES TO: KRS 311A.030, 311A.190, 14 C.F.R. Parts 91, 125

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. 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 service originating in Kentucky without having first obtained 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 KEEMS Office with an accurate map and a written description of its geographic service area within the commonwealth, which 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 KEEMS 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 (696), with the KEEMS 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.

4. 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 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 changes 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 (10) 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 KEEMS 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 KEEMS 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 KEEMS 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 KBEBS Office shall specify the reasons why the plan
cannot be accepted; and
(b) The provider shall modify or amend the plan and resubmit it
to the KBEBS Office within ten (10) days after receipt of the
plan is insufficient.

15. Unannounced inspections [by the KBEBS Office] may be
conducted at the discretion of the board or its representative for:
(a) Complaint allegation;
(b) Follow-up visit;
(c) Re-licensing inspection;
(d) Any licensed provider may be recommended for discipline
based on:
(i) Failure to submit, amend, or modify a plan of correction in
order to eliminate or correct regulatory violations;
(ii) Failure to eliminate or correct regulatory violations;
(iii) Falsifying an application for licensing;
(iv) Changing a license issued by the board;
(v) 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 KBEBS Office;
(h) Providing an unauthorized level of service;
(i) Demonstrating a history of staff violations that have resulted
in disciplinary action;
(j) Failing to provide the board or its representative with informa-
tion upon request, or obstructing an investigation regarding
alleged or confirmed violations of statutes or administrative regu-
lations;
(k) Issuing a check for a license on an invalid account or an
account with insufficient funds to pay fees to KBEBS; or
(l) Submitting fraudulent or misleading claims for remunera-
tion to:
1. An individual;
2. A private insurance company; or
3. A governmental agency;
(m) Any violation of KRS Chapter 311A or 202 KAR Chapter
7(010) 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 KBEBS
Office of the make, model, year, serial number, and FAA identifica-
tion 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 regula-
tion.

(3) Each provider shall notify the KBEBS 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 KBEBS 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;
and
(b) Within five (5) business days, the provider provides the
board written notice identifying:
1. The make, model, year, serial number, and FAA identifica-
tion 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 KBEBS Office has verified through a
physical inspection that it meets the requirements of this adminis-
trative regulation.

(6) The KBEBS Office shall be notified by email or fax within
twenty-four (24) hours or on the next business day when a tem-
porary 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 portion of a day the aircraft is in service
and the reporting requirements are not met.

Section 4. Provider Management Requirements. (1) All provid-
ers shall:
(a) Maintain an organizational chart that establishes lines of
authority, including the designation of:
1. An administrator responsible for assuring compliance with
this administrative regulation during the daily operation of the
service; and
2. A designee who shall serve in the absence of the adminis-
trator;
(b) Maintain records and reports at the ambulance service
base station or at a location where the records can be made readily
available to KBEBS staff including:
1. An original, microfilm, electronic equivalent, or copy of all
run reports whether reported on.
2. A paper or electronic run form developed by the provider
that contains all of the data components of the nonexempt areas of
the EMS-8A and EMS-8B (9/98) or the latest data elements
required by the board.
(c) Maintain a copy of all completed run report forms, main-
tained 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, five (5) years after the minor reaches
eighteen (18) years of age. Copies of run reports shall be acces-
sible so as to be immediately available to the board, KBEBS Office
or representatives upon request;
(d) Maintain personnel files for each employee or volunteer
who starts 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 num-
bers 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 record
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:

- 1157 -
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 KyO-SHA 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;
(i) Maintain a written plan for training personnel and responding 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;
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. Stretchers operations and use;
9. Completion of run reports, and
10. Other standard operating procedures that have been established by the provider;
(k) Maintain proof of professional liability malpractice insurance; and
(l) Maintain proof of aircraft liability Insurance.
m) Provide a copy of the current FAA Air Carrier Certificate; and
(n) Maintain a written policy regarding patient criteria for interfacility transfers including a written statement of medical necessity signed by a physician for each patient transferred.
(2) 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 plans 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 135 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 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) The air ambulance provider shall share current aircraft position data, through computer interface with other air ambulance providers, if the air ambulance provider utilizes a satellite tracking position mechanism if utilizing a satellite tracking position mechanism that all air ambulance providers shall share current aircraft position data, through computer interface, with any other air ambulance provider.
(e) Failure of all requests for service are promptly answered.
(3) 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 of 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 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.

1. Contiguous Counties. These agreements shall be in writing and address:
(a) The type of mutual aid assistance to be provided;
(b) Personnel, including levels of training or education, and provisions for joint in-service training or education if appropriate;
(c) Personnel, 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 communication procedures between the air ambulance provider 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 dates and process for amendment or termination.
(6) 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

1. The above 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 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) The air ambulance provider shall share current aircraft position data, through computer interface with other air ambulance providers, if the air ambulance provider utilizes a satellite tracking position mechanism if utilizing a satellite tracking position mechanism that all air ambulance providers shall share current aircraft position data, through computer interface, with any other air ambulance provider.
(e) Failure of all requests for service are promptly answered.
(3) 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 of 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 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.

1. Contiguous Counties. These agreements shall be in writing and address:
(a) The type of mutual aid assistance to be provided;
(b) Personnel, including levels of training or education, and provisions for joint in-service training or education if appropriate;
(c) Personnel, 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 communication procedures between the air ambulance provider 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 dates and process for amendment or termination.
(6) 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

1. The above 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 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) The air ambulance provider shall share current aircraft position data, through computer interface with other air ambulance providers, if the air ambulance provider utilizes a satellite tracking position mechanism if utilizing a satellite tracking position mechanism that all air ambulance providers shall share current aircraft position data, through computer interface, with any other air ambulance provider.
(e) Failure of all requests for service are promptly answered.
(3) 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 of 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 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.

1. Contiguous Counties. These agreements shall be in writing and address:
(a) The type of mutual aid assistance to be provided;
(b) Personnel, including levels of training or education, and provisions for joint in-service training or education if appropriate;
(c) Personnel, 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 communication procedures between the air ambulance provider 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 dates and process for amendment or termination.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(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 personnel when away from the aircraft; and
(e) All aircraft when approaching and denoting a landing zone in uncontrolled airspace shall announce their intentions to other aircraft via 121.505 MHz.

(9)(14) An air ambulance provider 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 property trained ACS to receive and coordinate all calls as provided for by FAR. If providing fixed-wing services, this requirement may be met by filing an FAA flight plan.

(10)(14) An ACS shall have documented training appropriate to the transmission 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)(14) 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 specifications.

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) Be climate controlled and maintain a temperature of not less than sixty-five (65) degrees nor more than eighty-five (85) degrees Fahrenheit in the patient compartment during patient transport or demonstrate a procedure for maintaining patient temperature sufficient to prevent hypothermia and hyperthermia.
(c) All pharmaceuticals shall be kept within the recommended temperature range as established by the manufacturer or as otherwise established by FDA standards.
(d) Have an air-conditioning system that shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the patient compartment during patient transport in summer-weather conditions. The requirement shall be met within one (1) year from the effective date of this administrative regulation.
(e) Utilize an 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;
(f) Be configured in such a way that air medical personnel shall have access to the patient in order to begin and maintain both basic and advanced life support;
(g) Have lighting adequate to ensure complete observation of the patient;
(h) Have a procedure in place to limit light in the cockpit area during night operation;
(i) 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 isocar and intra-aortic balloon pump;
(j) Have equipment, stretchers, and seating;
1. Arranged so as not to block rapid egress by air ambulance personnel or patients, and
2. Fixed or secured in FAA approved racks, compartments, or strap restraints which meet FAR “G” loading requirements;
(k) 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.
(l) Provide proof of an FAR Part 135 certificate with an FAR required air ambulance specification; and
(m) 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. One (1) RN or LPN who is licensed in the state of Kentucky.

2. A RN and an LPN licensed in the state of Kentucky.

3. One (1) RN or LPN licensed in the state of Kentucky.

4. A licensed respiratory therapist or a critical care nurse.

(b) Each attendant required by subsection (1) of this section shall demonstrate fulfillment of current certification or the equivalent thereof as approved by the board of the following:

(c) ALS fixed-wing patient transport shall be minimally staffed by:
(a) A pilot as required by this administrative regulation; and
(b) Two (2) attendants who shall be minimally certified as EMTs by the board as certified by the board as an EMT.

(3) ALS fixed-wing patient transport shall be minimally staffed by:
(a) A pilot as required by this administrative regulation; and
(b) One (1) RN or LPN licensed in the state of Kentucky.

(c) The second patient attendant shall be one (1) of the following:

1. A certified nurse anesthetist.

2. A physician assistant.

3. A respiratory therapist or critical care nurse.

4. A registered nurse.

5. A respiratory therapist or critical care nurse.

6. A respiratory therapist or critical care nurse.
specific patient care,

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.

A specialty care transport patient transport 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 (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;
   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; or
   e. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311.

All regular and specialty care air ambulance patient attendants (medical-flight personnel) shall attend and document flight orientation training on-premise as primary-medical-personnel leave. Flight orientation training shall include:

(a) Altitude physiology;
(b) Aircraft-specific operations and in-flight safety;
(c) Emergency operations and survival training;
(d) Crew resource management (scene safety);
(e) Communication equipment utilization and emergency procedures (use of extrication equipment);
(f) Scene triage;
(g) Kentucky EMS statutes and administrative regulations; and
(h) Communication equipment utilization and emergency procedures.

All regular air ambulance patient attendants shall complete and document additional flight orientation training to include:

(a) Scene safety;
(b) Use of extrication equipment;
(c) Scene trauma;
(d) Kentucky EMS statutes and administrative regulations;
(e) Advanced emergency 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) M/tessa trauma emergencies;
(l) Toxicology;
(m) Hazardous materials awareness level training;
(n) Hemodynamic monitoring;
(o) Mechanical ventilation and respiratory physiology; and
(p) Pharmacology.

All regular air ambulance patient attendants shall complete and document annual continuing education which shall include a review of:

(a) Infection 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) High risk, or low volume procedures as outlined in the program’s scope of care.

An attendant shall remain with the patient in the patient compartment at all times during transport.

All aircraft, providing ALS care, that are licensed and based in Kentucky shall have [adequate] 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.

An aircraft that are licensed in Kentucky but based in contiguous states may use the staffing requirements of the state in which they are located if [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.

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.

[14(a)] Staffing configurations as outlined in this administrative regulation may supplement or replace [15(b)] Nothing in this or any other administrative regulation promulgated by the board should be construed as preventing any staffing configuration outlined in the 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 if:

1. When the aircraft was unable to complete a patient flight due to deteriorating weather conditions or other unplanned events;

2. For the purpose of providing a continuous care from the scene to the aircraft or from the aircraft to the patient destination.

Air ambulance personnel shall be responsible for ensuring 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 emergency medical services transports the (a) The rotor-wing PIC (pilot in command) PIC complies with all requirements as set forth in 14 CFR 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.

A rotor-wing pilot shall:

1. Be trained and equipped in accordance with operators FAR Part 135 air ambulance operations specifications;
2. Have a minimum of five (5) hours as PIC in the specific aircraft type prior to performing emergency medical services missions;
3. Have five (5) hours local area orientation which shall include mission-specific right orientation of at least two (2) hours flight time;

4. Be specifically trained and experienced in flying the terrain and conditions unique to the flight program.

The fixed-wing pilot shall:

1. Be trained in accordance with operators FAR Part 135.4 operator specifications; and
2. 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 rotor 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-op
2. Rigid catheters;
3. Flexible catheters in adult, pediatric and infant sizes;
4. Bulb syringe or meconium aspiration 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 adult and child and infant and with water soluble lubricant;
7. Adult, obese adult, child, and infant laryngoscope knives with stylet scope. A permanently mounted laryngoscope knife shall not be included as required,)
(b) Oxygen and airway supplies and equipment, including:
1. An installed [A 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 supplying (shall supply) at least 50 liters;
3. A backup source of oxygen, which may be the required portable tank if it is [there must be a backup source of oxygen. The backup source can be the required portable tank as long as it is carried in the patient care area during flight in the event the main system fails. The backup source shall be source must be delivered via a non-gravity 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. Disposable oxygen humidifier and attachment for use on the fixed oxygen tank;
6. Oxygen supply tubing;
7. Transparent nonbreather oxygen masks for adults and pediatric,[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 stock;
(c) Trauma equipment and [Bandages, bandaging supplies [and tape]] including:
1. Two (2) sterile universal dressings at least 10 in. x 30 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
10. 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 and management equipment and [First-aid supplies, supplies, including:
1. Adult, obese adult, pediatric, and infant laryngoscope knives with stylet scope. A permanently mounted laryngoscope knife shall not satisfy this requirement. [Hand-held flashlight capable of providing adequate lighting to assess a scene or 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) stethoscope- like]
4. A device for monitoring pulse oximetry; and [Instant glucose]
5. Thermometer;
6. Personal protective equipment, which shall be available to each flight member responding on the aircraft, including:
   a. One (1) clean scrub gown or substitute, such as disposable coveralls;
   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 or without an exhaust port for protection of crew members; and
7. A means of cleansing the hands, such as disposable towlettes or other solutions;
8. (f) Patient comfort items, including:
   a. Two (2) clean blankets and sheets; and
   b. An emesis container or similar substitute.
9. (g) General supplies, including:
   a. Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the aircraft;
   b. One (1) stethoscope kit;
   c. Instant glucose and [bite stick] and
   d. An AED with a minimum of two (2) complete sets of pads for all non-ALS fixed-wing aircraft;
   e. Splints, including:
      - Lower-extremity mechanical traction splint in adult and pediatric sizes; and
      - Splints for arm, full leg, and foot including rigid, inflatable, or vacuum splints;
   f. Immobilization devices, including:
      a. 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; and
   g. One (1) [five (5)-pound size or larger] multipurpose fire extinguisher which meets FAA requirements for each specific aircraft and configuration.
   h. All aircraft shall have a stretcher or litter with:
      - A head-raising capability;
      - An FAA approved aircraft-specific mechanism for securing the stretcher or litter in the aircraft during transport; and
      - An FAA approved aircraft-specific patient to stretcher securing mechanism.
   i. Centralized [patient protective equipment shall be available to each flight member responding on the aircraft, including:
      a. One (1) clean scrub gown or substitute, such as disposable coveralls;
      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 or without an exhaust port for protection of crew members; and
   g. A means of cleansing the hands, such as disposable towlettes or other solutions;
   h. Cleaning materials shall be available, including:
      a. Hospital type disinfectants;
      b. Glass or multisurface cleaner;
      c. Trash bags for disposal of nonbiohazard waste materials;
      d. Biohazard bags for the disposal of biohazard waste items;
      e. Biohazard bags for the disposal of sharps; and
      f. Biohazard bags for the disposal of sharp objects.
   i. Patient comfort items, including:
      a. Two (2) clean blankets and sheets;
      b. A disposable urinal;
      c. A disposable bed pan; and
      d. An emesis container or similar substitute.
   j. Environment, terrain, and mission-specific rescue and survival supplies; and
   k. (F) Current expiration dates shall be required for any item that carries an expiration date.
   l. (g)
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-operational 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 cricothyrotomy;
   6. Alternative airway device to include at least one (1) of the following:
      a. LMA;
      b. Combitube;
      c. King Airway; or
      d. Additional alternative airway device as approved by the service medical director.

(b) [An] End tidal carbon dioxide detection devices, including:

   a. [An] &[device]:[A] [device] that provides continuous waveform and real time detect of end tidal CO2; and

   b. A disposable esophageal device.

(c) [7] [4] Stylettes in adult and pediatric sizes;

(d) [9][8] Magill forseps in adult and pediatric sizes;

(e) [10][9] One-half (1/2) inch wide tape or equivalent for securing endotracheal tubes; and

(f) [11][10] 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 monitoring cable; and
   c. One (1) additional roll of paper for hard copy printout;
   (c) Pulse oximeter;

   (d) Mechanical ventilation device;

   (e) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers’ patent treatment protocols;

   (f) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers’ patent treatment protocols;

   (g) Restriction band appropriate for use with venipuncture procedure;

   (h) Dextrostix or equivalent for the measurement of blood glucose levels;

   (i) Disposable, individually-packaged antiseptic wipes;

   (j) [14] [11] Intravenous fluids as required by the provider’s protocol, with macro drip and micro drip fluid sets, extension sets and accessory items including over-the-needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;

   (k) [15] [12] Intravenous needles; and

   (l) 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 [approved by] the Cabinet for Health Services’ Drug Control Branch.

(5) A provider may maintain an administrative regulation where the provider from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board.

(6) Current 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. A provider may maintain nothing in the administrative regulation shall preclude the provider from maintaining other supplies or equipment required to carry out its protocols as approved by the board.

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 7:801.

Section 13. 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;

   (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. 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 2168.020(2)(f);

   (b) An aircraft serving as an ambulance during a disaster or major catastrophe;

   (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 other 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; and

   (c) An aircraft licensed in an adjoining state that responds to a mutual aid request from a Kentucky licensed provider for emergent 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.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

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 disseminated, the name of an ambulance provider that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 13(14) Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form EMS-6A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);
(b) Form EMS-6S, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);
(c) Form EMS-1, "Kentucky Application for Ambulance Service Licensing", (6/98) and
(d) "Air Medical Intake Flow Chart", (10/2008).[Kentucky Board of Emergency Medical Services-Form No.1,(5/96)]

(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 40383-2645, Frankfort, Kentucky 40624, Monday through Friday, 8 a.m. to 4:30 p.m.

ROB ROTHENBURGER, Chairman
APPROVED BY AGENCY: July 7, 2008
RECORDED IN THE OFFICE OF THE SECRETARY OF STATE:
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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS. October 14, 2008)

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.090,150.470, 150.990(29)

STATUTORY AUTHORITY: KRS 150.025(140.026(4))
150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(150.026(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, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation establishes fish size limits, daily catch limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:
(a) Made of:
1. Wood;
2. Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and
(b) Not having attached:
1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Chumming" means placing substances in the water[placing materials upon which fish might eat in the water] for the purpose of attracting fish to a particular area[in order that they might be taken].

(3) "Cull" means to replace a 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[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[have in-possession] 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) "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 closely attended, and to which one or more hooks are attached.

(12) "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) "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) "Single hook" means a hook with no more than one (1) point.

(15) "Size limit" means the minimum legal length of a fish.

(16) "Slot limit" means a minimum and maximum size limit or lengths that a fish must reach before it is released[have in-possession].
(a) Shall release fish within a specified minimum and maximum size, and
(b) May keep fish above and below 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, Ladies] (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. The possession limit shall be two (2) times the daily limit unless otherwise specified in Section 4 of this administrative regulation[have in-possession.
(a) Black bass: daily limit, six (6)[have in-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)[have in-possession limit-thirty (30)];
(c) Sauger, walleye, and their hybrids: daily limit, singly or in combination, six (6)[have in-possession limit-twelve (12)]; size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.
(d) Muskellunge: daily limit, one (1)[have in-possession limit-twice (2)]; size limit, thirty (30) inches.
(e) Chain pickerel: daily limit, five (5)[have in-possession limit-ten (10)]; no size limit.

VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(f) White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15). [possession limit, thirty (30).] Size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass daily limit, five (5); daily and possession limit, five (5); size limit, fifteen (15) inches.

(h) Crappie: daily limit, thirty (30); [possession limit, sixty (60).] No size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily 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) (a) A person shall release fish:

   (A) Below the minimum size limits established by this administrative regulation;

   (B) Within a protected slot limit established by this administrative regulation; or

   (C) Of a particular species, if a person possesses the possession limit or less of a 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 except that:

   (a) Fishing tournament organizers and their representatives, excluding the tournament anglers, may have over the daily creel limit of tournament caught fish:

      1. At the weigh-in site;

      2. At the release site; or

      3. When transporting live fish from a remote weigh-in site back to the water body of origin for release.

   (b) Fishing tournament organizers and their representatives, excluding the tournament anglers, may have over the daily creel limit of unprocessed tournament caught fish that entered at the site established in paragraph (a) of this subsection for disposal by one (1) of the following methods:

      1. Bagged, sealed, and placed in a garbage dump;

      2. Given to a charity for the purposes of human consumption;

      or

      3. Transferred to a conservation officer or to another agent of the department.

(6) Any person shall not remove any part of the head or tail from a fish while fishing. A head shall be a size or creel limit shall not be removed while fishing. A fish shall not be considered to have 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 the administrative regulation shall apply to the 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) Sauger: size limit, fourteen (14) inches.

   (3) Barren River Lake shall extend up [-including-]

      (a) Barren River to the Highway 100 bridge;

      (b) Long Creek to the Highway 100 bridge;

      (c) Beaver Creek to the Highway 1297 bridge;

      (d) Skaggs Creek to the Matthews Mill Road bridge; and

      (e) Peter Creek to the Peter Creek Road bridge.

   1. Crappie: size limit, nine (9) inches.

   2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

   (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) Bert Combs Lake, Clay County. A person shall not possess shad or use shad for bait.

      (6) Basshears Lake, Caldwell County. Channel catfish: size limit, twelve (12) inches.

      (7) Bolts Lake, Grant County. A person shall not possess shad or use shad for bait.

      (8) Briggs 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) Muskieeslinga: 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) Carnic Lake, Nicholas County. Largemouth bass[-largemouth 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 Cave State Park Lake, Carter County. A person shall not possess shad or use shad for bait.

      (a) Fishing shall be during daylight hours only.

   (b) Largemouth bass in the lake shall not shall not be removed while fishing.

   (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, one (1); 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: [possession limit, two (2), 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 Devil's Jump;

      (c) The Rockcastle River to the Narrow; and

      (d) The Laurel River to Laurel River Dam.

   1.[-(a)] Largemouth: size limit, fifteen (15) inches.

   2.[-(b)] Smallmouth bass: size limit, eighteen (18) inches; [shall
be eighteen (18) inches.

3.[66] Striped bass: size limit, twenty-four (24) inches; daily [and-possession-limit], two (2) fish.

4.[69] Crappie: size limit, ten (10) inches.

(20) Cumberland River downstream from Barkley Lake Dam.

Species: 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 [free-culf], twenty (20) inches; daily [and-possession-limit], one (1) fish.

(b) Rainbow trout: slot limit - a person shall release fish between fifteen (15) and twenty (20) inches. Daily limit, five (5) fish; possession limit, twelve (12) inches; creel limit, five (5) fish. All fish shall not include more than one (1) fish greater than twenty (20) inches; and

(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(d) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

[22] [Cyprus-AMAX (currently owned by-Addington Enterprises), and Robertson Forest Wildlife Management Areas, Breakfast, Knott, and Perry Counties. On uplanded waters of the area:

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Sunfish-family: size limit, fifteen (15); possession limit, thirty (30).

(c) Channel catfish: daily and possession limit, four (4).

(d) A person shall not fish:

1. Except during daylight hours, or

2. On Starlake between January 1 and May 31.


(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish greater 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) 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).


[25][25] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall not fish except with an artificial bait.

[26][26] Doe Run Lake, Kenton 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.

[27][27] Dog Fork, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

[28][28] 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.

[29][29] Emler 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.


[31][31] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5); possession-limit, ten (10) fish; size limit, 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.

[33][33] Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(a) A person shall not possess shad or use shad for bait.

(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.

[34][34] Green River Lake. Crappie: size limit, nine (9) inches.


(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

[37][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) fish; possession limit, forty (40) fish.

(c) Sauger: size limit, fifteen (15) inches.

[38][38] Kincaid Lake, Pendleton County. Channel catfish: size limit, twelve (12) inches.

[39][39] Lake Blythe, 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][40] Lake Malone, Mulvaneburg and Logan County.

(a) 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.

(b) Channel catfish: size limit, twelve (12) inches.

[41][41] Lake Mingos, Jessamine 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.

[42][42] Lake Pollywog, Grant 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.

[43][43] Lake Reba, Madison County.

(a) 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.

[44][44] Lake Shelby, Shelby 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.

[45][45] Lake Little River.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches; daily limit, two (2); possession-limit, four (4).

(c) Crappie: size limit, nine (9) inches; daily limit, fifteen (15) possession-limit, thirty (30) fish.

[46][46] Lebanon City Lake (Fagan Branch), Manon County.

Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

[47][47] Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) 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).
VOLUME 35, NUMBER 5 - NOVEMBER 1, 2008

(48) Lincoln Homestead Lake, Washington County.
(a) 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)].
(d) A person shall not possess shad or use shad for bait.
(49) Marion County Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad for bait.
(50) McNeely Lake, Jefferson County. A person shall not possess shad or use shad for bait.
(51) Mill Creek Lake, Powell County.
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); [possession limit, six (6)].
(b) A person shall not possess shad or use shad for bait.
(52) New Haven Optimist Lake, Nelson 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.
(53) Nolin River Lake shall extend upt...-whose-impoundment-extend-up-to bacon streem to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) [and the possession limit two (2)] bass under fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches.
(54) Ohio River.
(a) Walleye, sauger, and their hybrids: no size limit; daily limit, ten (10); [fresh] 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 limit shall be fifteen (15) inches or greater];
(55) Paint Creek between upper Highway 460 Bridge and Highway 46 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily limit, one (1); [fresh]; artificial bait only.
(56) Paintsville Lake.
(a) Largemouth bass: size limit, fifteen (15) inches; [size limit, twenty (20) to fifteen (15) inches.
(b) Smallmouth bass: size limit, eighteen (18) inches.
(57) Parched Com Creek, Wolfe County. A person shall:
(a) Not fish except with an artificial bait with a single hook, and
(b) Release brook trout.
(58) Pennyrile Lake, Christian County. Largemouth bass: size limit - a person shall release fish between twelve (12) and fifteen (15) inches.; size limit, twelve (12) to fifteen (15) inches.
(59) Pikeville City Lake, Pike County. Catch and release largemouth bass fishing (no harvest).
(60) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 132. A person shall:
(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.
(61) Rough River Lake.
(a) Crappie: size limit, nine (9) inches.
(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) bass and the possession limit two (2) bass under fifteen (15) inches.
(62) Shanty Hollow Lake, Warren 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.
(63) Shiloh Lake, Ball County, 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) Sportsman's Lakes, Franklin County.
(a) A person shall not possess shad or use shad for bait.
(b) upper Sportsman's Lake:
(i) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3);
(ii) Largemouth bass: size limit, fifteen (15) inches; daily limit, four (4);
(iii) Largemouth bass: size limit, fifteen (15) inches; daily limit, fifteen (15) inches,
(65) Spruiing Lake, Taylor County. A person shall not possess shad or use shad for bait.
(66) Symons Lake, Nelson County. Largemouth bass: size limit, fifteen (15) inches.
(67) Taylorsville Lake, including the impounded waters of the lake near 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.
(68) 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); [fresh]; possession limit, eight (8).
(69) Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.
(70) Wood Creek Lake. Largemouth and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches.
(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches.
(71) 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 Claraks River from Boe Creek upstream to Old Salem Road Bridge in Calloway County;
(h) East Fork of Indian Creek in Menifee 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) Lack Creek in Simpson County;
(l) Middle Fork Red River in Natural Bridge State Park in Powell County;
(m) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and
(n) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.
(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolfe County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:
(a) Size limits for selected species;
(b) CREEL limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 15, 2008 at 11 a.m.
CONTACT PERSON: Rosie Mass, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(As Amended at AARRS, October 14, 2008)


RELATES TO: KRS 154.30-010, 154.30-030, 154.30-040, 154.30-050, 154.30-060, 154.30-070, and (Chapter 164, Subchapter 30 and KRS 154.20-033.

STATUTORY AUTHORITY: KRS 154.30-030(2)(b) and KRS 154.20-033.

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.30-030(2)(b) requires the Kentucky Economic Development Finance Authority to establish additional standards and requirements for the application process for Tax Increment Financing. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation establishes the application process for tax increment financing and the procedures that occur between preliminary approval and final approval. (clarifies the application process, identifies the information required for purposes of application, and identifies the steps that shall be taken by the authority and the applicant between preliminary approval and final approval.)

Section 1. Definitions. (1) "Agency" is defined by KRS 154.30-010(2).
(2)[(3)] "Agreement" means a "tax incentive agreement" as defined by KRS 154.30-010(2).
(3)[(4)] "Application" means the form "Application for State Tax Increment Financing (TIF)."
(4)[(5)] "Authority" is defined by KRS 154.30-010(5).
(5)[(6)] "Capital Investment" is defined by KRS 154.30-010(6).
(6)[(7)] "City" is defined by KRS 154.30-010.
(7)[(8)] "County" is defined by KRS 154.30-010(10).
(8)[(9)] "Development area" is defined by KRS 154.30-010(13).
(9)[(10)] "Incentives" means the portion of state tax revenues as defined in KRS 154.30-010(28) that may be pledged by the authority under the specific tax increment financing participation program for which an applicant has applied.
(10)[(11)] "Project" is defined by KRS 154.30-010(25).
(11)[(12)] "Tax incentive agreement" is defined by KRS 154.30-010(22).

Section 2. Application. (1) A city, county or agency applying for incentives pursuant to KRS Chapter 154.30 shall submit an application to the Department of Financial Incentives within the Cabinet for Economic Development at the Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601.
(2) Applications [shall] may be submitted by electronic mail, by mail or by hand delivery.
(3) If an application is submitted by electronic mail, the signature pages relevant to that application shall [must] be submitted by mail in the original hard copy. The authority shall not accept electronic signatures.

Section 3. Local Certification. The governing body of the city, county, or agency submitting the application shall include with its submission to the authority the determinations, findings, and data required by KRS 65.7049(3) and (4).

Section 4. Application Supplements. In addition to the information required by KRS 154.30-030, the applicant shall provide:
(1) All information and attachments required by the "Application for State Tax Increment Financing (TIF)" which is incorporated herein by reference.
(2) An application fee in the amount of $1,000; and
(3) Copies of any grant or loan applications, agreements, contracts or other documentation related to financing of the project shall be provided upon request of the authority.

Section 5. Preliminary Approval. (1) If the application and supplemental information submitted in accordance with Section 4 of this administrative regulation indicates, based upon the application itself and other information submitted to or required by the authority, that it appears that the minimum requirements for any of the Tax Increment Financing Programs involving state participation are likely to be met, the staff shall make a recommendation to the authority and submit the project for preliminary approval.
(2) If the authority staff cannot confirm the minimum requirements, a letter shall be sent to the applicant identifying the specific requirements which have not been met.

Section 6. Use and Costs of Contract Consultant. (1) If the project receives preliminary approval, and state participation is requested under KRS 154.30-050 or 154.30-060, the authority shall consult with an outside consultant with the expertise required to analyze the project pursuant to KRS 154.30-030.
(2) If the application requests state participation under KRS 154.30-050 or 154.30-060, the authority shall consult with the Office of State Budget Director, the contract consultant, and the Department of Revenue and develop an appropriate analysis that will meet the requirements of KRS 154.30-030.
(3) [Notwithstanding the statutory section under which state participation is requested,] if the authority seeks analysis of a contract consultant:
(a) The contract consultant shall provide an estimate of the cost of the analysis;
(b) The consultant shall pay to the authority the total estimated cost of the analysis in advance and shall execute a consultant payment agreement; and
(c) The authority shall pay the contract consultant from the consultant funds paid by the applicant to the authority in accordance with the terms and conditions of the consultant payment agreement.
(3) Any balance of funds remaining after completion and delivery of the contract consultant's analysis to the authority shall be returned to the applicant.

Section 7. Memorandum of Agreement. If the authority grants preliminary approval of the application, the authority shall enter into a Memorandum of Agreement with the applicant which shall include, but not be limited to, the following:
(1) Identification of the footprint of the project;
(2) The total maximum incentive amount preliminarily approved by the authority;
(3) Conditions for final approval, including:
(a) Verification of representations made in the application and other documents submitted in association with the application; and
(b) Payment for all professional services that may result from the application including legal fees and expenses of counsel to the authority pursuant to KRS 154.20-033;
(4) A data by which all statutory and regulatory requirements for final approval shall have been met and a schedule for periodic reporting at the discretion of the authority; and
(5) Terms and standards for amendment of the Memorandum of Agreement.

Section 8. Information Sharing. (1) The authority may seek comments and recommendations from the Office of the State Budget Director and the Department of Revenue.
VOLUME 35, NUMBER 5 — NOVEMBER 1, 2008

(2) Information provided to the authority in conjunction with the application may be shared with the Office of State Budget Director, Department of Revenue and any affected local jurisdictions as well as appropriate experts or contract consultants[ ];[ ] and Those agents, experts or contract consultants shall maintain the confidentiality of the information provided to the extent that the information is exempt from disclosure under the Kentucky Open Records Act, KRS 61.878.

Section 9. Final Approval. Upon final approval of a project by the authority, the authority and the agency shall enter into a tax [incentive[ and]] agreement pursuant to KRS 154.30-070.

Section 10. Payment of Administrative Fees. (1) Upon final approval and execution of the tax incentive agreement by KRS 154.30-070, the applicant shall remit to the authority an administrative fee equal to 0.25% of the incentives authorized in the tax incentive agreement, not to exceed $50,000. This administrative fee shall be[es] exclusive of any contract consultant fees or legal fees which may be due.

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


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN HALE, Chairman
JOHN E. HINDMAN, Secretary
APPROVED BY AGENCY: July 21, 2008
FILED WITH LFC: July 21, 2008 at 4 p.m.
CONTACT PERSON: Cathene C. Stab, Assistant General Counsel, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1533.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, October 14, 2008)

401 KAR 5:057. KPDES pretreatment requirements.

RELATES TO: KRS 61.870-61.884, 224.01-010, [224.01-070, 224.01-400], 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 1.25(e), 25[130], 131, 136, 258, 261, [Chapter I, Subchapter H, 401-471[ et seq.], 403 Appendix [Appendix A], D 503, 33 U.S.C. 1251[132][et seq.], 1251(h), 1251(k), 1251(e)(4)(c), 4370, 4718, 4914(4), 42 U.S.C. 6901, 6902, 6905, 6907, 6908, 507, 2008-531[ et seq.].

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 224.73-120, 40 C.F.R. 1.25(e), 25[130], 131, 136, 258, 261, [Chapter I, Subchapter H, 401 et seq., 403 Appendices A, D 503, 33 U.S.C. 1251-1257[ et seq.], 1251(h), 131(f), 131(g), 131(h), 131(i)(4)(c), 4370, 4718, 4914(4), 42 U.S.C. 6901, 6902, 6905, 6907, 6908, 507, 2008-531[ et seq.].

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050 authorizes the cabinet to implement the Federal Water Pollution Control Act, 33 U.S.C. 1251-1257. KRS 224.73-120 authorizes the cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, recordkeeping and reporting, effluent limitations, and pretreatment standards for the introduction of pollutants into treatment works. EO 2000-507 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 implements 33 U.S.C.[Section 1311, 1314, 1317, 1318, 1319, 1342, and 1345, as these federal statutes relate 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. In accordance with 40 C.F.R. 403.1[that] prevent, through or inure, the treatment works, or that may escape from the plant or facility at any time, 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 cause the treatment works to otherwise be incompatible with the treatment works, and to improve opportunities to recycle and return municipal and industrial waters and sludge. The administrative regulation implements sections 204(b)(1)(A), 208(b)(3)(o), 301(b)(1)(A)(i), (ii), (iii), (v), (vii), (ix), 301(b)(2)(A), (v), (vi), (vii), 301(b)(2)(B)(i), (ii), (v), (vi), (vii), (viii), 304(e) and (g), 307, 308, 309, 402(b), 405, and 601(a) of the Federal Water Pollution Control Act of 1972 (PL 95-217) or the Act. It establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants which pass through or interfere with treatment works in publicly owned treatment works (POTWs) or which may contaminate sewage sludge. Its objectives are to prevent the introduction of pollutants into POTWs 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 which will pass through or interfere with treatment works and, otherwise, be incompatible with the treatment works, and to improve opportunities to recycle and return municipal and industrial wastes and sludge.

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 Pollution Control Act, 33 U.S.C. 1251-1257 or this administrative regulation.


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. 403.6, 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 and 224.10-212, 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 61.670 to 61.684.

Section 12. Net-gross calculation shall be as established in 40 C.F.R. 403.15, July 1, 2006.

Section 13. Upset provisions shall be as established in 40 C.F.R. 403.15, July 1, 2006.

Section 14. By-passes shall be as established in 40 C.F.R. 403.17, 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. Appropriability. (1) This administrative regulation shall apply to:

(a) Pollutants from non-domestic sources which are discharged into waterways transported by trucks or rail or otherwise introduced into POTW;

(b) POTW which receive wastewater from sources subject to national pretreatment standards; and

(c) New or existing sources subject to pretreatment standards.

(2) This administrative regulation shall not apply to sources which lawfully discharge to a sewer which is not connected to a POTW treatment plant.

Section 2. Local Law. This administrative regulation shall not affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as local requirements are no 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)(a) 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 it 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 have or have reason to know that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and

2. A local limit designed to prevent pass-through or interference was developed in accordance with subsection (3) of this section for each pollutant in the user's discharge that caused pass-through or interference, and the user was in compliance with each local limit directly 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 substantial interference or discharges from the user's source prior discharge activity when the POTW was regularly in compliance with the POTW's KPDES 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 (77 F) or sixty (60) degrees Celsius (140 F) using the test methods specified in 40 C.F.R. 261.21;

(b) Pollutants which may cause corrosive structural damage to the POTW, but no discharges with pH lower than five and zero-tens (5.0), unless the POTW is specifically designed to accommodate the discharges;

(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 (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 such that the temperature at the POTW treatment plant exceeds forty-five (45) degrees Celsius (104 F) unless the user, upon request of the POTW, approves alternate temperature limits;

(f) Petroleum or non-biodegradable 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, vapor, or fumes within the POTW in a quality that may cause acute worker health and safety problems or

(h) Trucked or hand 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 these 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 plant facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's KPDES 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.

(4) Local limits. If specific prohibitions or limits on pollutants or pollutant parameter(s) are adopted by a POTW and are consistent with subsection (3) of this section, the limits shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act, 33 U.S.C. Sec. 1317(d).

(5) EPA and cabinet enforcement actions under Section 306(f) of the Clean Water Act, 33 U.S.C. Sec. 1316(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 persons or groups who have requested these notices, the POTW fails to commence appropriate enforcement action to correct the violations, EPA or the cabinet may take appropriate enforcement action under the authorities provided in Section 306(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 subpart of 40 C.F.R. Chapter I, Subchapter IV—Categorical Standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this administrative regulation.

(1) Category determinations 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 included, 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 new or modified process or operation. A request for the certification shall be submitted to the cabinet within five (50) days of notification of the change. The Industrial user may provide written comments on the certificate to the cabinet, within thirty (30) days of notification.

(b) 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 shall certify to the cabinet that the information submitted is true and complete.

(c) Defendant 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 submittal of the cabinet shall, after determining that it contains all of the information required by paragraph (b) of this section, consider the submission. Additional evidence that may have been requested, and other available information relevant to the request shall then be made available to the cabinet. The cabinet shall, after the determination is made by the EPA, send a copy of the determination to the affected industrial user and the cabinet.

(e) Requests for hearing or legal action. Written requests for hearing of the final determination as provided by paragraph (3) of this subsection, the requestor may submit a petition for reconsideration of the determination or for reconsideration of the determination. The requestor shall file the petition in the court of the county in which the affected industrial user resides. The petition shall be filed prior to the issuance of a variance. The petition shall be filed within sixty (60) days after receipt of the final determination.

(f) Deadlines for compliance with the categorical pretreatment standards.

(g) Industrial users operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the control authority within two (2) business days after the user has a reasonable basis to know that production will significantly change within the next calendar month. A user notifying the control authority of an anticipated change shall meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

(h) 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 a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which have using dilution as a substitute for adequate treatment, and for other reasons if the imposition of mass limitations is appropriate.

(i) Combined waste stream formula. If process-effluent is mixed prior to treatment with wastewaters other than those generated by the process, fixed alternative discharge limits may be derived by the control authority, or by the industrial user.
with the 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 value 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. The industrial user 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. Substitution shall be authorized if there is a material or significant change in the process used in the calculation to fix alternative limits for the regulated pollutant. An industrial user shall immediately report the material or significant changes to the control authority. If appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

(a) Alternative limit calculation. Either of the formulas in subparagraph 2 or 3 of this paragraph shall be used for deriving an alternative limit for a specified pollutant.

1. The average daily flow \(F_D\) shall be a reasonable measure of the average daily flow for a thirty (30) day period from the following sources; for new sources, flows shall be estimated using projected values:

\[ F_D = \frac{1}{N} \sum_{i=1}^{N} F_{D,i} \]

(a) Boiler-blowdown streams, noncontact cooling streams, storm water streams, and de minimis backwash streams. However, those streams shall contain a significant amount of wastewaters and the combination of those streams, prior to treatment, with an industrial user's regulated process waste streams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may determine whether these streams should be classified as diluted or regulated. In its application to the control authority, the industrial user shall provide engineering, production, sample analysis and other information necessary so that the control authority be able to make its determination;

2. Sanitary waste streams that are not regulated by a categorical pretreatment standard;

3. 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 403, Appendix D:

(i) The pollutants of concern are not detectable in the effluent from the industrial user;

(ii) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(iii) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the U.S. EPA administrator;

(iv) The waste stream contains only pollutants which are compatible with the POTW.

2. Alternative concentration limit:

\[ C_T = \left( \frac{1}{N} \sum_{i=1}^{N} C_{F,i} \right) \left( \frac{F_T - F_0}{F_T} \right) \]

where:

\( C_T \) = the alternative concentration limit for the combined waste stream.

\( F_R \) = the average daily flow for the regulated stream.

\( F_0 \) = the average daily flow for the unregulated stream.

\( F_T \) = the total volume flow at the treatment facility.

\( N \) = the total number of regulated streams.

3. Alternative mass limit:

\[ M_T = \left( \frac{1}{N} \sum_{i=1}^{N} M_{i} \right) \left( \frac{F_T - F_0}{F_T} \right) \]

where:

\( M_T \) = the alternative mass limit for a pollutant in the combined waste stream.

\( M_i \) = the categorical pretreatment standard mass limit for a pollutant in the regulated stream, or the categorical pretreatment mass limit multiplied by the appropriate measure of production.

\( F_T \) = the average flow, at least a thirty (30) day average, of stream i to the extent that it is regulated for the pollutant.

\( F_0 \) = the average daily flow, at least a thirty (30) day average, from paragraph 1 of this paragraph.

\( F_R \) = the average daily flow, at least a thirty (30) day average, through the combined treatment facility, including \( F_T \) and unregulated streams.

\( N \) = the total number of regulated streams.

(b) Alternate limits below detection limit. An alternative pretreatment limit from paragraph (a) of this subsection shall not be used if the alternate limit is below the analytical detection limit for any of the regulated pollutants.

(c) Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements set forth in Section 8 of this administrative regulation.

(d) Choice of monitoring location. A treated regulated process waste stream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process waste stream or the combined waste stream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process waste stream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined waste stream, it shall apply an alternative discharge limit calculated using the combined waste stream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that a change in an industrial user's monitoring points with not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

Section 6. Removal Credits. (1) General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may subject to the conditions of this subsection, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standard. The POTW may grant a removal credit equal to or less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with paragraph (b) of this subsection. Removal credits may be given only for indicators or effluent pollutants regulated in a categorical pretreatment standard if the categorical pretreatment standard so specifies.

(b) Conditions for authorization to give removal credits. A POTW may give removal credits only if the following conditions are met:

1. Application. The POTW applies for, and receives, authorization from the cabinet to give a removal credit in accordance with requirements and procedures specified in the requirements and procedures specified in subsection (5) of this section.

2. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection (2) of this section.

3. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with the requirements and procedures specified in subsection (5) of this section.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

approval of this type of program, conditionally give credits as provided in subsection (4) of this section.

4. Sludge requirements. The granting of removal credits shall not cause the POTW to violate KRS Chapter 224 and administrative regulations promulgated pursuant thereto, or the local and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW may demonstrate to the cabinet that even though it is not presently in compliance with applicable sludge requirements, 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. If granting removal credits forces a POTW to incur greater sludge-management costs than would be incurred in the absence of granting removal credits, the additional sludge-management costs shall not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

a. For any of the pollutants listed in this clause for the use or disposal practice employed by the POTW when the requirements in 40 C.F.R. Part 503 are met:

<table>
<thead>
<tr>
<th>Pollutants</th>
<th>Use-Or-Disposal Practice</th>
<th>LA</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Barium</td>
<td>-</td>
<td>-</td>
<td>X</td>
</tr>
<tr>
<td>Cadmium</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Chromium</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Copper</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Lead</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Mercury</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Nickel</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Selenium</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Zinc</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Total-hydrocarbon, if the hydrocarbon is listed below</td>
<td>-</td>
<td>X</td>
<td>-</td>
</tr>
</tbody>
</table>

where:

LA—Land application;
SD—Surface disposal site without a liner and leachate collection system, and

(i) Firing of sewage sludge in a sewage sludge incinerator.
(ii) The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in 40 C.F.R. Part 503. Subpart E are met when sewage sludge is fired in a sewage sludge incinerator:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Use-Or-Disposal Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>-</td>
</tr>
<tr>
<td>Acid or Diodein, or both (Total)</td>
<td>2.7</td>
</tr>
<tr>
<td>Benzene</td>
<td>15</td>
</tr>
<tr>
<td>Benzene (anhydride)</td>
<td>45</td>
</tr>
<tr>
<td>Be(2-ethylhexyl)phthalate</td>
<td>100</td>
</tr>
<tr>
<td>Cadmium</td>
<td>100</td>
</tr>
<tr>
<td>Chlorinated</td>
<td>86</td>
</tr>
<tr>
<td>Chromium</td>
<td>100</td>
</tr>
<tr>
<td>Copper</td>
<td>46</td>
</tr>
<tr>
<td>DDE, DDD, DDT (Total)</td>
<td>132</td>
</tr>
<tr>
<td>Fluorine</td>
<td>7</td>
</tr>
<tr>
<td>Haptoxol</td>
<td>5</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>28</td>
</tr>
<tr>
<td>Hexachlorobutadine</td>
<td>500</td>
</tr>
<tr>
<td>Iron</td>
<td>72</td>
</tr>
<tr>
<td>Lead</td>
<td>63</td>
</tr>
<tr>
<td>Lindane</td>
<td>84</td>
</tr>
<tr>
<td>Methane</td>
<td>0.63</td>
</tr>
<tr>
<td>Mercury</td>
<td>100</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>40</td>
</tr>
<tr>
<td>Nickel</td>
<td>90</td>
</tr>
<tr>
<td>N-Nitrosodimethylamine</td>
<td>2.4</td>
</tr>
<tr>
<td>Phenol</td>
<td>82</td>
</tr>
<tr>
<td>Polychlorinated biphenyl</td>
<td>4.8</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>40</td>
</tr>
</tbody>
</table>

where:

LA—Land application;
SD—Surface disposal site;
I—Incineration.
Sewage sludge unit without a liner and leachate-collection system;

Sewage sludge unit with a liner and leachate-collection system; and

Value expressed in grams per kilogram, dry weight base.

e. For any pollutant in sewage sludge if the POTW deposits all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 C.F.R. Part 258.

5. KPDES permit limitations. The granting of removal credits shall not cause a violation of the POTW's permit limitations or conditions. Alternatively, 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 user 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 limit. Revised discharge limit 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 for a number between zero and one (1); and
- \( y \) = revised discharge limit for the specified pollutant, expressed in same units as \( x \).

(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 the time period prescribed in paragraph (b) of this subsection shall be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the influent level may be assumed to be the limit of measurement, and those 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 five (5) 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 to be measured.

(b) Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information as provided for in paragraph (a) of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit 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 subject 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 effluent and influent flow if representative data can be obtained. If the data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided in paragraph (a) of this subsection.

3. Sampling procedures; composite.

a. The influent and effluent operational data shall be obtained through twenty-four (24) hour flow-averaged composite samples. Sampling may be done manually or automatically and discontinuously or continuously. For discrete sampling at least twelve (12) aliquots shall be composited. Discrete sampling may be fractioned either by the time interval between each aliquot or the volume of each aliquot. All composites shall be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots shall be combined in the laboratory immediately before analysis.

b. 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-working days as well as working days. 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 adopted.

(3) 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 a daily, weekly, and seasonal sewage treatment plant loadings and performance for at least one (1) year.

(4) Effluent sample collection shall not be required to be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the cabinet requires detention time compensation. The cabinet may require that each effluent sample be taken approximately one (1) detention time 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 used shall be based upon the average of the daily flows during the same month of the previous year.

4. 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 used 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.

5. Analytical methods. The sampling, referred to in subparagraphs 1 to 4 of this paragraph and the analysis of these samples shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 or the equivalent. If 40 C.F.R. Part 136 does not contain sampling and analytical 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.

6. Calculation of removal. All data acquired 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. If these data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the cabinet as provided for in this subsection.

(3) Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal data shall be based on previously acquired data from comparable 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 discharge of the pollu-
tant in question, the PCTW 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 limits had been applied shall achieve compliance with the applicable categorical pretreatment standard 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.

(4) Exception to PCTW pretreatment program requirement. A PCTW required to develop a local pretreatment program by Section 6 of the administrative regulation may conditionally grant removal credits pending approval of the 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 wish conditionally to receive a removal credit shall submit to the PCTW the information required in Section 6(1) of the administrative regulation, except that new or modified industrial users shall submit only the information required by Section 6(1)(a) to (f) of the administrative regulation pertaining to the categorical pretreatment standard as modified by the removal credit.

(b) The PCTW may have submitted to the cabinet an application for pretreatment program approval meeting the requirements of Sections 6 and 7 of the administrative regulation in a timely manner.

(c) The cabinet may, at the PCTW's request, on a schedule for development of a pretreatment program included in the PCTW's KPDES permit.

(d) The PCTW 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 (4) of this section;
3. Submit a complete application for removal credits in accordance with subsection (6) of this section.

(e) If the PCTW receives authority to grant conditional removal credits and the cabinet subsequently makes a final determination, after appropriate notice, that the PCTW 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.

(f) If the PCTW grants conditional removal credits and the PCTW 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 this subsection, the conditional credit shall be terminated by the PCTW or the cabinet for the noncomplying 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.

(5) 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 application shall be made. An application for authorization to give removal credits or modify existing ones shall be submitted by the PCTW to the cabinet.

(c) When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

(d) 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. A certification that the PCTW has an approved local pretreatment program or qualifies for the exception to this requirement found in 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) of this section.

6. KPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's KPDES permit limit and conditions as required in subsection (1)(b) of this section.

(e) 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 the administrative regulation and shall not have more than 180 days from public notice of an application to complete the review.

(f) Nothing in this administrative regulation precludes an industrial user or other interested party from contesting the POTW in preparing and presenting the information necessary to apply for authorization.

(g) 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 extend removal credits to another pollutant if it is regulated in another categorical standard.

(b) Notice of removal credits. The POTW may extend removal credits to another pollutant if it is regulated in another categorical standard.

(c) 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.

(d) 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.

(e) 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 POTW, 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.

(f) Modification or withdrawal of removal credits.

1. Notice of POTW. The cabinet shall notify the POTW if, on the basis of pollution removal capability reports received pursuant to paragraph (e) 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 section;

(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-
reasonable efforts to correct the conditions resulting in untreated 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 overflow. 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.

If, by July 1, 1983, 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 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 of the KDPES permit in an acceptable compliance schedule, including a time line for correction of any deficiencies identified in the analysis. In considering what is a 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 by POTW (1) A POTW required to develop a pretreatment program, a POTW, or a combination of POTW and another authority, with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users or pollutants which pass through or interconnect with the operation of the POTW or are otherwise subject to pretreatment standards shall establish a pretreatment program. A POTW with a design flow less than five (5) MGD or less shall develop a pretreatment program if the cabinet determines that the nature or volume of the industrial wastewater, treatment process upsets, violations of POTW effluent limitations, contamination of municipal Twelve, or other circumstances warrant to prevent interference with the POTW or pass through.

(2) Deadline for program approval. A POTW which meets the criteria of subsection (1) of this section is identified through written notification by the cabinet shall develop and submit a pretreatment program for approval by the cabinet not 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 (4) of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of approved programs in permits. A POTW may develop an approved pretreatment program any time before the time limit set forth in subsection (2) of this section. The POTW's KDPES permit shall be reviewed or modified by the cabinet to incorporate the approved program condition as an enforceable condition of the permit. The modification of a POTW's KDPES 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. Those authorities and procedures shall be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal courts or courts of the Commonwealth, which authorizes or enables the POTW to apply to and enforce federal or state statutes and any administrative regulations implementing those statutes. The authority may be contained in statutes, ordinances, or joint powers agreements which the POTW...
is authorized to enjoin, enter into or implement, and which are authorized by state law. At a minimum, the 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 a non-compliant user if the contributions do not meet applicable pretreatment standards and requirements or if the contributions would cause the POTW to violate its NPDES 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, this 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 non-transferability without, at a minimum, prior notice to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
   c. Effluent limits based on applicable general pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law, whichever is more stringent;
   d. Monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sample frequency, and sample types, 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 applicable pretreatment standards and requirements and the submission of all necessary self-monitoring reports from industrial users as are necessary to assure and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in Section 9 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 premises 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 306 of the Act, 33 U.S.C. 1318;
6. Obtain remedies for noncompliance by 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 have authority to seek or assess 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 programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section 15 of this administrative regulation.
   a. Pretreatment 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; rules, 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 informal notice to the discharger, immediately and effectively to halt or prevent a discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. 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 an 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 penalty authority when the POTW has sought a monetary penalty which the cabinet believes to be insufficient.
7. Comply with the confidentiality requirements set forth in Section 11 of this administrative regulation;
8. 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 in subparagraph 1 of this paragraph of applicable pretreatment standards and applicable monitoring requirements of Sections 6 and 7 of this subpart 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 pursuant to paragraphs 1 or 2 of this paragraph, the cabinet shall provide written notice to each industrial user of its status and of all requirements applicable to it as a result of the status or condition; and
   4. Receive and analyze self-monitoring reports, and other notices transmitted by industrial users in accordance with the self-monitoring requirements in Section 9 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, occasional 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 the subsection, a slug discharge shall be a discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or nonroutine batch discharge. The results of those activities shall be reported to the cabinet upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
   a. Description of slug discharge practices, including nonroutine batch discharge;
   b. Description of stored chemicals;
6. Procedures for immediately notifying the POTW of slug discharges, including a discharge that would violate a prohibition under Section 2 of the administrative regulation, with procedures for follow-up written notification within five (5) calendar days; and
7. 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, and equipment, measures for containing toxic organic pollutants, hazardous effluent, materials, and equipment necessary for emergency response;
8. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by Section 8 of this administrative regulation, or indicated by analysis, inspection, and surveillance activities described in subparagraph 6 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; and
9. Comply with the public participation requirements of 40 C.F.R. Part 26, adopted without change, in the enforcement of national pretreatment standards. Those procedures shall include
provisions for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous two (2) months, were in significant noncompliance with applicable pretreatment requirements. For the purpose 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-five (65) 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 entries (TRE) 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 equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRE. TRE = 1.4 for BOD, total suspended solids (TSS), fats, oil, and grease, and TRC = 1.2 for all other pollutants except pH;

c. Other violations of a pretreatment smear limit (daily maximum or longer-term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

d. A discharge of a pollutant that has caused imminent danger to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (a)(6) of this subsection to halt or prevent such a discharge;

e. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone 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;

h. Other violations or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

(c) Funding — The POTW shall have sufficient resources and qualified personnel to carry out the authorized procedures described in paragraphs (a) and (b) of the subsection in some limited circumstances, funding and personnel may be delayed if the POTW has adequate legal authority and procedures to carry out the pretreatment requirements described in subsection (b). If a limited aspect of the program is not required to be implemented immediately.

(d) Local limits — the POTW shall develop local limits as required in Section 309(a) of this administrative regulation and demonstrate that they are necessary.

(e) The POTW shall develop and implement an enforcement response plan. The plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

1. Describe how the POTW will investigate instances of noncompliance;

2. Describe the type of escalating enforcement response the POTW 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 POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in paragraphs (a) and (b) of this subsection.

(f) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in 401-KAR 5.002, Section 4, of a significant industrial user.

4. The list shall identify the categories in 401-KAR 5.002, Section 4, applicable to each industrial user and, for industrial users meeting the criteria of a significant industrial user, shall also indicate if the POTW has made a determination pursuant to 401-KAR 5.002, Section 4, that the industrial user shall not be considered a significant industrial user.

2. The list shall be submitted to the cabinet, pursuant to Section 7 of the administrative regulations, as a nonsubstantive program modification pursuant to Section 115(7) of this administrative regulation.

3. Modifications to the list shall be submitted to the cabinet pursuant to Section 8 of this administrative regulation.

Section 7 — Pretreatment Programs or Authorization to Revise Pretreatment Standards: Submission for Approval. — (1) Who approves program. — A POTW 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.

(c) Contents of POTW program submission. — The program description shall contain the following information:

(a) A statement from the city attorney or legal counsel that the POTW has adequate authority to carry out the programs described in Section 6 of this administrative regulation. The statement shall:

1. Identify the provision of the legal authority which provides the basic for each procedural doctrine identified in Section 6 of this administrative regulation;

2. Identify the manner in which the POTW will implement the program requirements set forth in Section 6 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

3. Identify how the POTW 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 statute, ordinances, local regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the enforcement or 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 levels and full-time and part-time personnel available to implement the program.

(3) Conditional program approval. — The POTW may request conditional approval of the pretreatment program pending the acquisition 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 released if the submission demonstrates that

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW 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 POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a 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 renewal allowances granted to the POTW 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 7(c) of this administrative regulation.

(5) Cabinet action. — A POTW 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 POTW that the submission has been received and is under review; and

(b) Commence the public notices and evaluation activities set forth in Section 8 of the 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 notice shall identify defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of subsection (2) and (3) of the section and subsection (4) of this section, if appropriate.

(7) Consistency with water quality management plans.

(a) 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 Title 33 U.S.C. § 1326. The regional facility plan for a specific section of Section 208 Regional Facility Plan includes management-agency designations and addresses pretreatment in a manner consistent with the administrative regulation. To assure this consistency 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 approving or disapproving the plan.

(b) 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 the 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 Credit. 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 Section 6(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 Section 6(2) and (4) of this administrative regulation and, if removal credit authorization is sought, with Section 6(6) and 7(4) of this administrative regulation.

(2) Public notice and opportunity for hearing. Upon receipt of a submission the cabinet shall commence its review. Within twenty (20) work days after making a determination that a submission meets the requirements of Section 7(2) of this administrative regulation and, if removal credit authorization is requested, Sections 6(6) and 7(4) of this administrative regulation, the cabinet shall:

(a) Issue a public notice of request for approval of the submission.

1. The 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. Making notices of the request for approval of the submission to designated Section 208 regional planning agencies, federal fish, shellfish, and wildlife resource agencies unless those 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;

   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 state or federal agencies, person, or group of persons to request a public hearing with respect to the submission. If this request for public hearing shall be filed within the thirty (30) day or extended-comment period described in paragraph (c) of this section, the cabinet shall notify the person filing the request and the reasons why a hearing is warranted.

(c) 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) of this section. 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.

(3) 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 (1) of this section, the cabinet shall approve or deny the submission based upon the evaluation described in subsection (1) of this section and taking into consideration comments submitted during the period and the record of the public hearing, if held. If the cabinet makes a determination to deny the request, the cabinet shall so 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.

(4) EPA objection to cabinet's decision. No pretreatment program or authorization to grant removal allowances shall be approved by the cabinet if following the thirty (30) day or extended, 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 cote 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.

(5) Notice of decision. The cabinet shall notify those persons who submitted comments 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 a notice of approval or disapproval in the same newspaper as the original notice of request for approval of the submission was published. The cabinet shall identify in the notice of pretreatment program approval any
authorization to modify categorical pretreatment standards which
the POTW may make, in accordance with Section 5 of this admin-
istrative regulation, for removal of pollutants subject to pretreat-
ment standards.
(6) 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. (a) Reporting requirements for industrial users upon effec-
tive date of categorical pretreatment standard—baseline report.
Within 180 days after the effective date of a categorical pretreat-
mont 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 indus-
trial users subject to the categorical pretreatment standards and
currently discharging to or scheduled to discharge to a POTW shall
submit the control authority a report which contains the informa-
tion listed in this subsection. At least ninety (90) days prior to
commencement of discharge, new sources, and sources that be-
come industrial users subsequent to the promulgation of an appli-
cable categorical standard, shall submit to the control authority a
report which contains the information listed in paragraphs (a) to (c)
of this subsection. New sources shall also include in the report the
information on the method of pretreatment the source intends to
use to meet any applicable pretreatment standards. New sources
shall give 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 owns-
er.
(b) Permits—The user shall submit a list of environmental con-
trol 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 operations carried out by the industri-
al user. This description shall include a schematic process dia-
agram indicating 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 streams; and
2. Other streams as necessary to allow use of the combined
waste stream formula of Section 4(6) of this administrative regula-
tion, as referenced in paragraph (e)(6) of this subsection. The user
can determine average flow for verification of the flow rates of the
streams if so 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, of pollutants in the discharge from each regulated process. 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 organ-
ics. For all other pollutants, twenty-four (24) hour composite sam-
ples shall be obtained through flow proportional composite sam-
ping techniques if feasible. The control authority may waive flow propor-
tional composite sampling for an industrial user that demonstrates
that flow proportional sampling is not feasible. If flow sam-
ping is not feasible, samples may be obtained through time pro-
portional composite sampling techniques or through a minimum of
four (4) grab samples. The user shall 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 require-
ments 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 prior to
pretreatment, the user shall measure the flows and concentrations
necessary to allow use of the combined waste stream formula of
Section 4(6) of the administrative regulation. The user shall submit to the control
authority the pretreatment standards. If an alternate concentration or
mass limit has been calculated in accordance with Section 4 of this administrative regulation, the 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 amend-
ments thereto. If 40 C.F.R. Part 136 does not contain sampling or analyti-
cal 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, ap-
proved 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 pretreat-
ment measures.
8. The baseline report shall indicate the time, date, and place,
of sampling; the methods of analysis used; and shall certify that the
sampling and analytical procedures utilized were normal work cycles and
expected pollutant discharges to the POTW;
9. Certification—The user shall submit a statement, sworn to
by a representative of the industrial user and certified to by a quali-
died professional, indicating whether pretreatment stand-
ards are being met on a consistent basis, and, if not, whether
additional operation and maintenance (O&M) or additional pre-
treatment is required for the individual user to meet the pretreat-
ment 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 short-term schedule by which the industrial user will pro-
vide the additional pretreatment or O&M. The completion date in
this schedule shall not be later than the compliance date estab-
lished for the applicable pretreatment standard.
(h) If the categorical pretreatment standard has been
modified by a removal allowance pursuant to Section 4 of this
administrative regulation, the combined waste stream formula
pursuant to Section 4(6) of this administrative regulation, or a funda-
mentally different factor variance pursuant to Section 10 of this
administrative regulation, the user submits the report required
by this subsection not less than sixty (60) days prior to the
submission and the paragraph shall pertain to the modified limits.
(i) If the categorical pretreatment standard is modified by a
removal allowance pursuant to Section 5 of this administrative
regulation, the combined waste stream formula pursuant to Section
4(6) of this administrative regulation, or a fundamentally different
factor variance pursuant to Section 10 of this administrative regula-
tion, the user submits the report required by this section not
less than sixty (60) days prior to the modified limit.
(j) Compliance schedule for meeting categorical pretreatment
standards. The following conditions shall apply to the schedule
required by subsection (5)(g) of this subsection:
1. The schedule shall contain increments of progress in the
form of dates for the commencement and completion of major
events leading to the construction and operation of additional pre-
treatment required for the industrial user to meet the applicable
categorical pretreatment standards (e.g., hiring an engineer, com-
pleting preliminary plans, completing final plans, executing contract
to major components, commencing construction, completing con-
struction, etc.);
2. No increment referred to in paragraph (a) of this subsection
shall exceed nine (9) months.
(c) No 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 including, at a
- 1179 -
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 the 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 report and the failure to the control authority.

(3) Report on compliance with categorical pretreatment standards. 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 (1)(d) 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(3) of this administrative regulation, the report shall contain a reasonable measure of the user’s long-term production rate. For all other industrial users subject to categorical pretreatment standards specified 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 new source, following 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 standards. 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 (1)(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(4) of this administrative regulation, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(3) 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 specified 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 loadings, by the industrial user.

(6) Monitoring and analysis to demonstrate continued compliance.

(a) The reports required in subsections (1), (2), (4), and (5) of this section shall contain the results of sampling and analyses of the discharge, including the flow and the nature and concentration, or production and mass if required by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. If the POTW performs the required 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 a violation, the user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The user shall also 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.

1. The control authority performs sampling at the industrial user at a frequency of at least once per month.

2. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of the sampling.

3. The reports required by 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 monitoring necessary to assure compliance by industrial users with applicable pretreatment standards and requirements is established by the administrator pursuant to Section 304(h) of the Act, 33 U.S.C. 1324(h) and contained in 40 C.F.R. Part 136 and amendments thereto or with other test procedures approved by the administrator. Sampling shall be performed in accordance with the techniques approved by the administrator. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutants in question, the techniques described in this section of Part 136 and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(c) If an industrial user subject to the reporting requirement in subsection (4) of this section monitors discharge from its waste treatment facilities more frequently than required by the control authority, using the procedures prescribed in paragraph (d) of this subsection, the results of the 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 six (6) months, on dates specified by the control authority, a description of the nature, concentration, and flow 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 pollutant in question, or if the administrator 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 persons, approved by the administrator. The sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. If the POTW itself collects all the information required for the report, the noncategorical significant industrial user is not required to submit the report.

(8) Biannual POTW reports. POTW with approved pretreatment programs shall provide the cabinet with a report that annnually 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 biannually thereafter, and shall include at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. The list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user.

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;
(b) A summary of the status of industrial user compliance over the reporting period;
(c) A summary of compliance and enforcement activities, including inspections, conducted by the POTW during the reporting period;
(d) A summary of changes to the POTW's pretreatment program that have not been previously reported to the cabinet, and other relevant information requested by the cabinet;
(e) 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 characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (15) of this section;
(14) Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for POTWs.
(a) The POTW must implement a pretreatment program required by Section 6 of the administrative regulation.
(b) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program. For example, acquiring required authorities, developing funding mechanisms, acquiring equipment;
(c) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months;
(d) Not later than fourteen (14) days following each data in the schedule and the final data for compliance, the POTW shall submit a progress report to the cabinet including, 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 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(1)(b) of this administrative regulation and shall be signed as follows:
(a) By the person submitting the reports required by subsection (1) of this section as a corporation. For the purpose of this paragraph, a responsible corporate officer shall be:
1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision making functions for the corporation;
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 $1800-dollars, if authorized to sign documents has been designated or delegated to the manager in accordance with corporate procedures;
(b) An officer, partner or proprietor if the industrial user submitting the reports required by subsection (1), (3), or (4) of this section to 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 described in paragraph (a) or (b) of the 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 well-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 for the company, a new authorization satisfying the requirements of paragraph (e) of this subsection shall be submitted to the control authority prior to or together with reports to be signed 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 igning individual. 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:
(a) The provisions of 18 U.S.C. Section 1001 relating to fraud and false statements;
(b) The provisions of Section 300(c)(4) of the Act, 33 U.S.C. 437a(c)(4), as amended, governing false statements, representation or certification; and
(c) The provisions of Section 300(c)(6) of the Act, 33 U.S.C. 437a(c)(6), regarding responsible corporate officers.
(14) Recordkeeping requirements. The POTW is 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 for all samples:
1. The date, exact place, method, and time of sampling and the names of the person taking the sample;
2. The data analyses were performed;
3. Who performed the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.
(15) 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 or if requested by the cabinet or the regional administrator.
(a) A POTW to which reports are submitted by an industrial user pursuant to subsections (1), (3), and (7) of this section shall retain the reports for a minimum of three (3) years and shall make the reports 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 or if requested by the cabinet or the regional administrator.
(b) The industrial-user shall, no later than the POTW, the EPA regional waste management 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 set forth in 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial-user discharges more than 100 kilograms of this waste per calendar month to the POTW, the notification shall also contain the information in subparagraphs 1 to 3 of this paragraph to the extent the information is known and readily available to the industrial user. All notification shall have occurred within 180 days of July 24, 1990. Industrial users who commence discharges after July 24, 1990 shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. A notification under this subsection shall be submitted only once for each hazardous waste discharged. However, notifications of changed discharges shall be submitted, according to subsection (9) of this section. The notification requirement in the subsection shall not apply to pollutants already reported under self-monitoring requirements of subsection (1), (3), and (4) of this section:
1. An identification of the hazardous constituents contained in the waste;
2. An estimation of the mass or concentration of the constituents in the waste stream discharged during that calendar month;
3. An estimation of the mass of constituents in the waste;
stream expected to be discharged during the following twelve (12) months.

(b) Discharges shall be exempt from the requirements of paragraph (a) of this subsection during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous waste or less than one (1) cubic yard of hazardous waste as specified in 40 C.F.R. 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonaqueous hazardous waste in a calendar month, or of any quantity of acute hazardous waste as specified in 40 C.F.R. 261.30(d) and 261.33(e), requires a one (1) time notification. Subsequent months during which the industrial-user discharge more than those quantities of hazardous waste shall not require additional notification.

(c) If new federal regulations are promulgated under Section 301 of RCRA, 42 U.S.C. 6921, identifying additional characteristics of hazardous waste or listing an additional substance as a hazardous waste, the industrial-user shall notify the POTW, the EPA regional waste management division director, and Kentucky Division of Waste Management of the discharge of the substance within ninety (90) days of the effective date of the federal regulations.

(d) 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—Categorical—Pre-treatment Standards

(1) Purpose and scope—The U.S. EPA may, on a case-by-case basis, adjust the limits in categorical pre-treatment 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 pre-treatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pre-treatment standard, may request a fundamentally different factors-variance under this section or such variance request 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 pre-treatment standard which specifically controls the pollutant for which alternative limits have been requested;
2. Factors relating to the discharge controlled by the categorical pre-treatment standard are fundamentally different from the factors considered by EPA in establishing the standards; and
3. The request for a variance is made in accordance with the procedural requirements in subsections (3) and (4) of this section.

(b) Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the standard shall be approved by EPA only if:

1. The alternative limit requested is no 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 pretreatment 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 standard; or
b. A nonwater-quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.

(c) Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the standards 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.

(d) Notice—The user shall file a variance request with the POTW, the EPA regional waste management division director, and the Kentucky Division of Waste Management. The variance request shall be filed with the POTW, the EPA regional waste management division director, and the Kentucky Division of Waste Management within thirty (30) days after the effective date of the variance.
water system including water supply, process wastewater systems, and points of discharge; and
(a) A statement of facts clearly establishing why the variance request should be approved, including detailed supporting data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the pretreatment standard.

(6) Deficient requests. The cabinet will act only on written requests for variances that contain all of the information required. Persons who have made incomplete submittions will be notified by the cabinet that their written requests are deficient and unless the time period is extended, will be given up to thirty (30) days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the cabinet, the request for a variance shall be denied.

(7) Public notice. Upon receipt of a complete request, the cabinet shall provide notice of receipt, opportunity to review the submission, and opportunity to comment.

(a) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

- The POTW into which the industrial user requesting the variance discharges;
- Adjoining states whose waters may be affected; and
- Designated Section 208 regional planning agencies, federal fish, shellfish, and wildlife resource agencies, the Department of Fish and Wildlife, and to other persons or groups who have requested individual notice, including those on appropriate mailing lists.

(b) The public notice shall provide for a period not less than thirty (30) days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(c) Following the comment period, the cabinet will make a determination on the request taking into consideration comments received. Notice of this final decision shall be provided to the requestor, the industrial user for which the variance is requested, if different than the requestor, the POTW into which the industrial user discharges, and all persons who submitted comments on the request.

(10) Review of requests by state.

(a) If the cabinet finds that fundamentally different factors do not exist, it may deny the request and notify the requestor, the industrial user if they are not the same, and the POTW of the denial.

(b) If the cabinet finds that fundamentally different factors do exist, it shall forward the request, with a recommendation that the request be approved, to the regional administrator or the regional administrator's delegate.

(11) 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 shall deny the request for a 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.

(12) 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 for a hearing to the Environmental Appeals Board, as described in 40 C.F.R. 125.6, within thirty (30) days of the regional administrator's decision.

Section 11. Confidentiality. (1) Authorities. 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 61.870 to 61.882 and 61.890 to 61.976.

Section 12. Net-gross 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 credits for intake pollutants shall apply to the control authority. Upon request of the industrial user, the applicable standard shall be calculated on a net basis (i.e., adjusted to reflect credits for pollutants in the intake water) if the requirements of subsections (2) and (3) of this section are met.

(2) Criteria.

(a) The industrial user shall demonstrate that the control system or treatment process of the industrial user is designed 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 wastewater pollutants either at the outfall or elsewhere.

(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.

(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 net 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.
industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
(a) An upset occurred and the industrial user can identify the cause of the upset;
(b) The upset 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 the information is provided orally, a written submission shall be provided within five (5) days:
1. A description of the indirect discharge and cause of non-compliance;
2. The period of non-compliance, including exact dates and times, or, if not correctable, the anticipated time the non-compliance is expected to continue, and
3. Steps being taken or planned to reduce, eliminate, and prevent recurrence of the non-compliance;
(d) Burden of proof in enforcement proceedings—the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.
(e) Reviewability of the cabinet’s consideration of claims of upset. The cabinet shall review claims that non-compliance was 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 non-compliance with categorical pretreatment standards.
(f) User responsibility if an upset occurs. The industrial user shall control production or all discharges 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, among other things, the primary source of payment of the treatment facility fails or is reduced or lost.

Section 14. Bypass. An industrial user shall comply with this section in addressing by-passes.
(a) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow a bypass to occur if it will not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to assure efficient operation. These by-passes shall not be subject to subsections (2) and (3) of this section.
(b) Notice. An industrial user knows or is in advance of the need for a bypass. It shall submit prior notice to the control authority, if possible, at least ten (10) days before the date of the bypass.
(c) Bypass not violating applicable pretreatment standards or requirements. An industrial user shall also provide 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, rotation of untreated waste, or maintenance during normal periods of equipment downtime. This condition shall not be satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
3. The industrial user submitted notice as required under subsection (2) of this section.
(b) The control authority may approve an anticipated bypass, after considering all adverse effects, if the control authority determines that it will meet the three (3) conditions listed in paragraphs (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 modifications are 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 the administrative regulations.
(2) Substantial modifications. Substantial modifications include:
(a) Modifications that relax POTW legal authorities as described in Section 6(a) of this administrative regulation, except for modifications that directly reflect a revision to the administrative regulation or to 40 C.F.R. Chapter I, Subchapter N, and are reported pursuant to subsection (4) of this section;
(b) Modifications that relax local limits, except for the modification to local limits for pH and recalculations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loading for the pollutant, which are reported pursuant to subsection (4) of this section.
(c) Modifications that increase the POTW’s control mechanism, as described in Section 6(a) of this administrative regulation;
(d) An increase in the frequency of soil-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 less stringent requirements being imposed on 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 6 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 use the procedures in Section 8(2) through (6) of this administrative regulation, except as provided in paragraphs (c) and (d) of this subsection of the section. The modification shall become effective upon approval by the cabinet.
(c) The cabinet shall not be required to publish a notice of decision under Section 8(5) of this administrative regulation.
(f) The notice of request for approval under Section 8(2) of this administrative regulation states that the request shall be approved if no comments are received by a date specified in the notice.
(g) No substantive comments are received; and
(h) The request is approved without change.
(d) Notice required by Section 8(2) of this administrative regulation may be performed by the POTW if the cabinet finds that the notice otherwise satisfies the requirements of Section 8 of this administrative regulation.
(4) Approval procedures for nontechnical modifications. (a) The POTW shall notify the cabinet of nontechnical modifications at least forty-five (45) days prior to implementation, in a statement similar to that provided for in subsection (3)(a) of this section.
(b) Within forty-five (45) days after the submission of the
POTW's statement, the cabinet shall notify the POTW of its decision to approve or deny the nonequivalent modification.

(c) If the cabinet does not notify the POTW within forty-five (45) days of its decision to approve or deny the modification, or to treat the modification as nonequivalent under subsection (b) of this section, the POTW may implement the modification.

(6) Incorporation into the permit. All modifications shall be incorporated into the POTW's KPDES permit upon approval. The permit shall be modified to incorporate the approved modification in accordance with 401-KAR 5.070, Section 6(3)(g).

Section 16. Pretreatment Program Re-Initiation: 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 Pretreatment program shall meet the alternative requirements as a substandard program modification in accordance with the procedures outlined in Section 16 of the administrative regulation. The approved modified program shall be incorporated as an enforceable part of the POTW's KPDES permit. The cabinet shall include a reopener 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 objectives of the local pilot pretreatment program are not being met or 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 oversight laws during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Kentucky Division of Water, 14 Reilly 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. 125.4(c), "Environmental Appeals Review Board," as in effect on July 1, 2001, for the appellos of the U.S. EPA's granting of removal credits.

(2) 40 C.F.R. Part 26, "Public Participation in Programs Under the 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 141, "Water Quality Standards," as in effect on July 1, 2001 for water quality management plans;

(5) 40 C.F.R. Part 126, "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, "Cirtana 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 Waste," 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 Effluent Limitations and Standards and New Source Performance Standards," as in effect on July 1, 2001;

(9) 40 C.F.R. Part 403, Appendix A, "Program 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 Standards Formula," as in effect on July 1, 2001, for the list of process waste streams that were not or could have been entirely exempted by the U.S. EPA's and

(11) 40 C.F.R. Part 503, "Standards for the Use or Disposal of Sewage Sludge," as in effect on August 1, 1999, for the eligibility of specific pollutants for removal credits.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, October 14, 2008)

401 KAR 50:066. Conformity of transportation plans, programs, and projects.


Section 1. All transportation plans, transportation improvement plans, and projects subject to 40 C.F.R. 93, Subpart A, shall be found to conform to the Kentucky State Implementation Plan before they shall be [are] implemented. This finding of conformity shall be done in accordance with the consultation procedures outlined in the document, "Transportation Conformity: A Guide for Interagency Consultation," that is incorporated by reference. [Definitions. As used in 40 C.F.R. 51.390, "EPA" means the U.S. Environmental Protection Agency.]


(2) This [The] material [incorporated by reference] may be [obtained; inspected, or copied; or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 200 Fair Oaks, First Floor, Frankfort, Kentucky 40601, (502) 564-3850, Box 30157, Frankfort, 40621, (502) 565-3323.

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5283.

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

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

(e) Hazard Regional Office, 223 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022.

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

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 887-7304; and
JUSTICE AND PUBLIC SAFETY CABINET  
Office of the Secretary  
(As Amended at ARRS, October 14, 2008)  

500 KAR 3:010. Definitions.  

RELATES TO: KRS 61.360  
STATUTORY AUTHORITY: KRS[13A.140.] 15A.160  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160  
authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. This administrative regulation defines terms used in 500 KAR Chapter 3 which pertain to the administration of KRS 61.360, "The Special Local Peace Officer Act," by the Governor or his designee.  

Section 1. Definitions. [The following definitions shall apply in this chapter:]  
(1) ["Secretary"] shall mean the Secretary of the Justice Cabinet.  
(2) ["Cabinet"] means [shall mean] the Justice and Public Safety Cabinet.  
(3) ["Commission"] means [shall mean] a commission issued to an individual by the Secretary of the Justice and Public Safety Cabinet. [Justice] entitling the individual [him or her] [such individual] to perform special local peace officer duties on specific private property.  
(4) ["Private property"] means [shall mean] specific real property currently owned by an individual, company, or agency in the Commonwealth of Kentucky.  
(5) ["SLPO"] means Special Local Peace Officer.  
(6) ["SLPO program administrator"] means the administrator appointed by the Secretary of the Justice Cabinet to administer the Special Local Peace Officer Program whose address is: SLPO Program Administrator, Justice and Public Safety Cabinet, 123 Holmes Street, Frankfort, Kentucky 40601.  
(7) ["Special local peace officer"] means one who meets the requirements of KRS 61.360 and as set forth in KRS 61.360 means one who has duties include:  
(a) [Shall mean one whose duties include the] protection of specific private property from intrusion, entry, larceny, vandalism, abuse, waste, or trespass; [and]  
(b) [Shall mean one whose duties include the] prevention, observation or detection of, or apprehension for, unlawful activity on specific premises; [and]  
(c) [Shall mean one whose special duties include the] control of the operation, parking of motor vehicles, bicycles and other vehicles, and the movement of pedestrian traffic on specific private property; and  
(d) [Shall mean one whose duties include the] answering of any intrusion alarm on specific private property.  

VICKIE WISE, General Counsel  
For J. MICHAEL BROWN, Secretary  
APPROVED BY AGENCY: August 14, 2008  
FILED WITH LRC: August 14, 2008 at 2 p.m.  
CONTACT PERSON: Ty Martin, Environmental Technologist I, Division for Air Quality, 803 Scoenialkai Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email: ty.martin@ky.gov.  

JUSTICE AND PUBLIC SAFETY CABINET  
Office of the Secretary  
(As Amended at ARRS, October 14, 2008)  

500 KAR 3:020. Filing and processing SLPO commissions.  

RELATES TO: KRS 61.360  
STATUTORY AUTHORITY: KRS[13A.140.] 15A.160  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160  
authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or his designee to appoint a Special Local Peace Officer. This administrative regulation establishes the procedures for applying for a commission as a Special Local Peace Officer and the procedures for filing and processing applications for special local peace officer commissions.  

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a Special Local Peace Officer, the applicant must meet the following requirements:  
(1) An applicant [Applicant] shall meet all of the requirements of KRS 61.360 before a commission shall be granted. An applicant [each individual] who qualifies may hold additional commissions for different property locations [but may only be commissioned in his residential county.]  
(2) The applicant shall complete two (2) notarized [SLPO Application Candidate Information (SLPO-1)] forms, which shall include the following:  
(a) [Applications with the necessary information as specified therein and in these administrative regulations.] The name of the property owner [owner or his agent who is being protected shall be listed as indicated on the application.]  
(b) [The] name, address, date of birth, and social security number of the applicant and a detailed personal description.  
(c) [A certified copy of the applicant's birth certificate (certificate, with or without two photographs of the applicant, which shall be:  
(i) Two (2) recent photographs of the applicant, which shall be [individual full],  
(ii) At least three (3) inches by five (5) inches in size [inches] and  
(iii) Taken within [the last thirty/twenty days prior to submission of the application.  
(c) A copy of the applicant's military discharge or Form DD-214, excepted, and the application fee shall be attached to the application. If the applicant is a veteran, a copy of his military discharge (Form DD-214) shall also accompany the application. The application fee shall be paid by:  
(i) The signatory of the property owner;  
(ii) A statement of all arrests and convictions including traffic offenses, violations, misdemeanors, or felonies; and  
(iii) The notarized signature of the applicant or his agent.  
(3) The ten ($10) dollar application fee shall be:  

- 1185 -
(a) Submitted with the application form;
(b) Nonrefundable; and
(c) Submitted by (to nonrefundable and shall be in the form of a check or money order made payable to the Kentucky State Treasurer.

(4) Submission of any false or misleading information or the [All arrests and convictions including traffic offenses, violations, misdemeannors or felonies shall be provided as requested on the application. Any false, misleading, or withholding of information requested on the application or by the[Justice] cabinet Investigator, shall be grounds for rejection without further consideration. The applicant affidavit shall be signed and notarized.] (The applicant affidavit shall be signed and notarized.)

(5) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(6) The applicant shall supply the necessary information to the SLPO program administrator for criminal history information record review. The applicant shall provide his name and detailed personal description.

(6) If the applicant's fingerprints are not on file with the Kentucky State Police Criminal Record Section, the SLPO program administrator shall make arrangements to have the applicant fingerprinted.

(7) The application shall also contain the Authority to Release Information Form (SLPO-4)[(SLPO-2)] to allow[which allows] the receipt of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a[Justice] cabinet official.

(7) The applicant shall also sign the SLPO Acknowledgment Notice Form[SLPO-5][SLPO-7] which indicates that:
(a) He has received, read, and understands:
  1. KRS 61.360;
  2. KRS 61.365;
  3. KRS 61.365;
  4. KRS 62.010;
  5. KRS 62.990; and
  6. The administrative regulations in 500 KAR Chapter 3 (a copy of the SLPO Act and these regulations). (a)
(b) He acknowledges that his authority is limited and restricted under the SLPO Act, cited in paragraph (a) of this subsection; and
(c) He understands and acknowledges that his commission as a SLPO officer may be terminated or otherwise relieved of his duties as a SLPO officer by the property owner or[his agent] shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or[Justice] cabinet official and is subject to control by the[Justice] cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer then the same to the SLPO program administrator.

(8) A notice shall be forwarded to the property owner[his agent] concerning any officer whose appointment has been suspended or revoked by the secretary. The property owner[his agent] shall maintain current files and make renewal applications at least sixty [(60)] thirty [(30)] days prior to the commission's expiration date.

(9) The SLPO commission certificate shall be held by the property owner[his agent] and shall be available for inspection by the[Justice] cabinet program administrator or his designee. The commission certificate remains the property of the[Justice] cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Renewals. A Letter of Intent Form (SLPO-3)[(SLPO-5)][Letter of Intent] from the property owner[his authorized agent] stating a request to renew a commission and a new set of applications for each applicant[individual] involved shall be filed with the[Justice] cabinet program administrator at least sixty [(60)] thirty [(30)] days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his record up-to-date.

Section 5. The Property Owner or his Agent Employing SLPO Officers - Records, Reports and Responsibility. Each property owner[his agent, or each agent] employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:
(a) The property owner[his agent] shall keep the individual SLPO program administrator to the secretary for review. After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file.
(b) When a commission is granted;
(c) The commission and all applications shall be forwarded by the[Justice] cabinet to the property owner[his agent] whose property is to be protected.
(d) The appointed applicant shall promptly take both applications to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty [(30)] days after notice of appointment.
(e) The county clerk shall then complete and sign the clerk's attestation on the applications and return one (1) copy for filing purposes in the county clerk's office in accordance with the statute.
(f) The applicant shall return the second application signed by the clerk to the property owner[his agent].
(g) The property owner[his agent] shall then return the second copy of the application to the[Justice] cabinet SLPO program administrator for the purpose of indicating that the oath was administered and that it is filed with the county clerk.
(h) The property owner[his agent] shall be allowed thirty [(30)] days to arrange for the appointed applicant to take the oath of office and return the application to the[Justice] cabinet program administrator. If the oath and application are not returned within thirty [(30)] days the process, otherwise, the commission shall be revoked in accordance with KRS 62.010 and 62.990.
(i) The commission certificate shall be kept by the property owner[his agent] so long as the officer is employed or until (each time that) his authority is terminated by action of the property owner[his agent] and[the[Justice] cabinet secretary. (j)

(3) A SLPO Commission shall be[The SLPO Commission is issued for a period of four [(4)]five [(5)]two [(2)] years, [provided that the officer continues to meet all statutory and regulatory criteria.

(4) [After] When the SLPO officer has taken the constitutional oath of office, the property owner[his agent] shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or[Justice] cabinet official and is subject to control by the[Justice] cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner[his agent] or[the[Justice] cabinet, he shall immediately return this identification card to the officer's property owner[his agent] who shall return the same to the SLPO program administrator.

(5) A notice shall be forwarded to the property owner[his agent] concerning any officer whose appointment has been suspended or revoked by the secretary. The property owner[his agent] shall maintain current files and make renewal applications at least thirty [(30)] days prior to the commission's expiration date.

(6) The SLPO commission certificate shall be held by the property owner[his agent] and shall be available for inspection by the[Justice] cabinet program administrator or his designee. The commission certificate remains the property of the[Justice] cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Renewals. A Letter of Intent Form (SLPO-3)[(SLPO-5)][Letter of Intent] from the property owner[his authorized agent] stating a request to renew a commission and a new set of applications for each applicant[individual] involved shall be filed with the[Justice] cabinet program administrator at least sixty [(60)] thirty [(30)] days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his record up-to-date.

Section 5. The Property Owner or his Agent Employing SLPO Officers - Records, Reports and Responsibility. Each property owner[his agent, or each agent] employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:
(a) The property owner[his agent] shall keep the individual - 1187 -
officer’s commission certificates on file, to be returned to the [Justice]Cabinet upon termination of the officer and/or his authority.

(2) The property owner[or his agent] shall post a copy of 500 KAR Chapter 3[these administrative regulations] and a copy of KRS 61.360 and 61.361 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner[or his agent] whose private property is being protected by the SLPO officer involved. However, the property owner[or his agent] shall notify the Justice cabinet SLPO program administrator by certified verbal communication within twenty-four (24) hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the property owner[or his agent]. If formal charges are pending, the property owner[or his agent] shall advise the SLPO program administrator as to all specific charges, trial dates, and the final disposition of all charges[the specific charge(s), trial date(s), and the final disposition of the charge(s)].

(4) The property owner[or his agent] shall mail a current list of all active SLPO personnel to the SLPO program administrator by June 30 each year.

(5) The property owner[or his agent] shall issue each SLPO officer an identification card, enclosed in plastic, upon the applicant[s]' individual[s]' appointment. The identification card shall be bifurcated in size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches) and shall include:

(a) [be composed as follows: contain on one (1) side] A reduced copy of the officer’s commission certificate (reduced by photographing or other method) on one side of the card. A full-sized photograph of the officer shall be included on the other side of the card and [along with it].

(b) The name, date of birth, Social Security number, and signature of the officer. The signature. The identification card shall be enclosed in plastic.

(5) The property owner[or his agent] shall be responsible for obtaining the Identification card from any officer terminated and remitting the same to the SLPO program administrator for destruction.

(7) If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the Cabinet of this fact and the reason for cancellation or revocation. This notice shall be given in writing to the Cabinet within five (5) days of cancellation or revocation. This notification provision shall be retroactive in application and shall be applicable to SLPOs who have already been commissioned.

Section 8. Violations. All property owner[owners, agents or agents] utilizing SLPO’s shall be subject to inspection and investigation by the[Justice] cabinet[as circumstances may warrant] for possible violations. Violations may result in prosecution and/or recommendation to the secretary[Justice] that the commission affected directly or indirectly be revoked.

Section 7. Revocation or Suspension of SLPO Commissions.

(1) If it is determined by the program administrator that KRS 61.360 of the SLPO Act applies to any active SLPO commissioned officer, the program administrator shall notify the secretary who shall revoke or suspend the commission of any special local peace officer, after an administrative hearing conducted in accordance with KRS Chapter 133, if it determines[whenever he shall determine]:

(a) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission;

(b) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the cabinet[secretary or agents or officers thereof], or

(c) That the commission-holder has violated any of the Kentucky Revised Statutes on administrative regulations cited in Section 27(1)(e) of this administrative regulation, or order of the secretary[Justice], promulgated administrative regulations or order of the secretary, the violation of which the secretary determines to bear a reasonable relationship to eligibility for the commission.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner[or his agent] involved to return the commission of the SLPO officer involved to the SLPO program administrator for the Justice cabinet. The property owner[or his agent] responsible for the SLPO officer involved shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO Identification card to the property owner[or his agent] who shall forward the card to the SLPO program administrator.

(3) The program administrator shall notify the county clerk in the officer’s county of jurisdiction [whenever a SLPO officer’s commission has been surrendered, suspended, or revoked.]

Section 8. Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers.

(1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner[or his agent] whose private property is being protected by the SLPO officer involved. The property owner[or his agent] shall be responsible for notification to the Justice cabinet[a] of any[and all] incidents involving their SLPO personnel as indicated in Section 5 of this administrative regulation[herein].

(2) The Justice cabinet program administrator or the SLPO officer involved or other assigned officers may investigate any[and all] complaints or unusual incidents involving a SLPO officer[officers]. If there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the Justice cabinet shall become part of the official record of the SLPO officer involved.

Section 9. Incorporation by Reference. (1) The following matter is incorporated by reference:

(a) "SLPO Application Candidate Information Form (SLPO-1)," August 14, 2008 edition;

(b) "Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)," May 8, 2008 edition;

(c) "Letter of Intent Form (SLPO-3)," July 28, 2008 edition;

(d) "Authority to Release Information Form (SLPO-4)," July 28, 2008 edition;

(e) "SLPO Acknowledgement Notice Form (SLPO-6)," July 28, 2008 edition.

(2) This material may be inspected, copied, or obtained as applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VICKIE WISE, General Counsel
For J. MICHAEL BROWN, Secretary
APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 14, 2008 at 2 p.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburg Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (895) 622-3073, fax (895) 622-5027.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, October 14, 2008)

803 KAR 25:08. Workers' compensation medical fee schedule for physicians.
342.035(1) requires the executive director[Commissioned] [Executive-Director] of the (Office) 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 executive director[Commissioned] [Executive-Director] to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department. 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 Kentucky 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 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 managing care plan 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 [x]. (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.

Section 5. Incorporation by Reference. (1) The Kentucky Workers' Compensation Medical Fee Schedule for Physicians, [(July 31, 2008) [June 2006] edition], is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department[Office] of Workers' Claims, Prevention Park, 637 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.
CONTACT PERSON: Carla H. Montgomery, General Counsel; Department of Workers' Compensation, 637 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at AR0S, October 14, 2008)

806 KAR 17:005. Health Insurance Forms and Reports.

RELATES TO: KRS 304.1-010, 304.4-010, 304.14-120, 304.14-190, 304.17A-095, 304.17A-096, 304.17A-600-304.17A-629

STATUTORY AUTHORITY: KRS 304.2-110(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(3) authorizes the executive director of insurance to promulgate reasonable administrative rules and 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. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes forms and reports to be submitted to the Department[Office] of Insurance by a health insurer or independent review entity.

Section 1. Forms and Reports. (1) Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings, shall be filed by an insurer with a form or rate for a basic health benefit plan. (2) Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report, shall be filed annually by an insurer offering a basic health benefit plan. (3) Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form, shall be filed with a rate for a health benefit plan. (4) Form HIPMC-F1, Face Sheet and Verification Form, shall be filed as the coversheet of a rate or form filing for a health benefit plan. (5) An Income and Expense Worksheet shall be filed with a rate for a health benefit plan. (6) Form HIPMC-R33, Health Benefit Plan Regions, which includes eight (8) identified health benefit plan regions in Kentucky, may be filed for a geographic region factor adjustment in a rate for a health benefit plan. (7) Form HIPMC-R34, Certification Form, shall be filed with a rate for a health benefit plan for an individual, association, or small group.

(8) Form HIPMC-IRE-1, Application for Certification of an Independent Review Entity, shall be filed by an independent review entity applying for certification to perform external reviews in Kentucky.
(9) Form HIPMC-IRE-2, Assignment of Independent Review Entity Form[External Review], shall be filed by an insurer if an external review is assigned to an independent review entity.
(10) Form HIPMC-IRE-3, External Review Decision Notification Form, shall be used by an independent review entity to notify the Department of Insurance of an external review decision.
(11) Form HIPMC-IRE-4, Annual Independent Review Entity Report Form[Independent Review Entity Annual Report], shall be filed by an independent review entity annually with the Department of Insurance.
(12) Form HIPMC-IRE-5, Approval of an External Review Fee In excess of $800[Guidelines for Approving External Review Fees], shall be used by the Department of Insurance to review excess fees of an independent review entity in unusual or complicated circumstances.
(13) Form HIPMC-IRE-6, External Review Information Face Sheet, shall be used by an insurer to provide information and documentation relating to an external review to an independent review entity.

(14) Form HIPMC-UR-1, Utilization Review Registration Application, shall be filed by an insurer or private review agent applying for registration to perform utilization review in Kentucky. (15) Form HIPMC-UR-2, Annual Utilization Review Report Form, shall be filed by an insurer or private review agent annually to the Department of Insurance. (16) Form HIPMC-R1, Risk-sharing Arrangement Information Sheet, shall be filed by an insurer for each risk-sharing arrange...
ment in force.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) [Form] HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings*, (07/2008)(11/2002);
(b) [Form] HIPMC-BHP-1, Basic Health Benefit Plan Annual Report*, (07/2008)(04/06);
(c) [Form] HIPMC-R32, Health Benefit Plan Rate Filing Information Form*, (07/2008)(04/06);
(d) [Form] HIPMC-F1, Face Sheet and Verification Form*, (07/2008)(02/08);
(e) "Income and Expense Worksheet", (1998);
(f) "[Form] HIPMC-R33, Health Benefit Plan Regions", (12/00);
(g) and (h) "[Form] HIPMC-R34, Certification Form", (07/2003);
(h) "HIPMC-IRE-1, Application for Certification of an Independent Review Entity", (07/2008);
(l) "HIPMC-IRE-2, Assignment of Independent Review Entity Form[External Review]", (7/2008);
(i) "HIPMC-IRE-3, External Review Decision Notification Form", (07/2008);
(k) "HIPMC-IRE-4, Annual Independent Review Entity Report Form[Independent Review Entity Annual Report]", (07/2008);
(l) "HIPMC-IRE-5, Approval of an External Review Fee in excess of $300[Guideline for Approving External Review Fees]", (07/2008);
(m) "HIPMC-IRE-6, External Review Information Face Sheet", (07/2008);
(n) "HIPMC-UR-1, Utilization Review Registration Application", (07/2008) and
(o) "HIPMC-UR-2, Annual Utilization Review Report Form", (07/2008); and
(p) [Form] HIPMC-R1, Risk-sharing Arrangement Information Sheet*, (07/2008)(10/98).
(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[Office] of Insurance Web site at http://insurance.ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, October 14, 2008)

806 KAR 17:280. Registration, utilization review, and internal appeal.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: [EQ 2004-731, signed July 9, 2004, created the Office of Insurance, KRS 304.17A-610(1) authorized 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-609 requires the office to promulgate [emergency] administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the office to promulgate [emergency] administrative regulations to develop a process for the registration of insurers or private review agents. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).
(2) "Authorized person" is defined in KRS 304.17A-600(2).
(3) "Board" means one (1) of the following governing bodies:
(a) The American Board of Medical Specialties;
(b) The American Osteopathic Association; or
(c) The American Board of Podiatric Surgery.
(4)(5) "Coverage denial" is defined in KRS 304.17A-617(1).
(6)(7) "Office" means the Office of Insurance.
(7)(8) "Department" means Department of Insurance.
(8)(9) "Insurer" is defined in KRS 304.17A-600(8).
(9)(10) "Limited health service benefit plan" is defined in KRS 304.17C-010(5).
(10)(11) "Nationally reocognized[Nationally-rerecognized] accreditation organization is defined in KRS 304.17A-600(10).
(11)(12) "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement, advising of a coverage denial as defined by KRS 304.17A-617(1).
(12)(13) "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of [the] utilization review program, the release of which is governed by KRS 304.17A-613(8).
(13)(14) "Private review agent" is defined in KRS 304.17A-600(4).
(14)(15) "Provider" is defined in KRS 304.17A-600(13).
(15)(16) "Qualified person" is defined in KRS 304.17A-600(14).
(16)(17) "Registration" is defined in KRS 304.17A-600(15).
(17)(18) "Utilization review" is defined in KRS 304.17A-600(18).
(18)(19) "Utilization review plan" is defined in KRS 304.17A-600(19).

Section 2. Registration Required. (1) The department[Office] shall issue[or renew] a registration to an applicant that has met all requirements of KRS 304.17A-600 through 304.17A-619 and 304.17A-623, if applicable, and Sections 2 through 11 of this administrative regulation.
(2) An applicant seeking registration or renewal of registration shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.
(3) An application for insurance or renewal of registration shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.
(4) If an insurer or private review agent desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department[Office] at least ninety (90) days prior to expiration of the current registration.

Section 3. Fees. (1) An application for insurance or renewal of registration shall be accompanied by a fee of $1,000.
(2) A submission of changes to utilization review policies or procedures to the department[Office] shall be accompanied by a fee of fifty (50) dollars.
(3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process. (1) An applicant shall complete and submit to the department[Office] a utilization review registration application, HIPMC-UR-1, as incorporated by reference in 806 KAR 17:025, and documentation to support compliance
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

with (10/02), which shall comply with the requirements established by KRS 304.17A-600 through 304.17A-623/304.17A-649, as applicable, including:

(a) A utilization review plan [that includes the items listed in KRS 304.17A-607(4)];

(b) The identification of utilization review criteria, including criteria for review of inpatient and outpatient services;

(c) Types and qualifications of personnel, whether employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607(1)(a), including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;

(d) A toll-free telephone number to contact the insurer, limited health service benefit plan, or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required:

1. [Required][required] By KRS 304.17A-609(4) [regarding reasonable accessibility during normal business hours in this state]; and

2. [Required][required] A copy of the policies and procedures to ensure availability to conduct utilization review, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(g);

(f) A copy of the policies and procedures by which:

1. A limited health service benefit plan [shall provide] a notice of review decision which complies with KRS 304.17A-607(1)(h) and (i) [304.17A-609(3)]; and, if applicable, 304.17A-607(1)(h), [including a denial of limitation or termination of health care benefits and which includes] a Date of the review decision, and

b Instructions for filing an internal appeal, or

2. An insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(h) and (i) [304.17A-609(3)]; and, if applicable, KRS 304.17A-607(1)(h) and 306 KAR 17:230, [concerning denial, limitation, reduction, or termination of health care benefits and which includes] a Date of the review decision, and

b Instructions for filing an internal appeal, including information concerning:

(i) The availability of an expedited internal appeal; and

(ii) For an adverse determination, the covered person's right to request that the review of the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and

(c) Information relating to the availability of:

(i) A review of a coverage denial by the department of health following completion of the internal appeal process; or

(ii) [Legally] An independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

(g) If [only] a part of the utilization review process, rather than the entire utilization review process, is delegated, a description of the delegated functions;

2. Entity to whom the function was delegated, including by name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance of the delegated entity with paragraph (f)(3) of this subsection;

(h) A copy of any electronic or written notice or document, which complies as applicable, in compliance with paragraph (f)(3) of this subsection;

(i) A copy of the policies and procedures by which a covered person authorized, person, or provider may request an appeal of an adverse determination or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:

(a) An oral request followed [up] by a written [representation], or a written request for an expedited internal appeal;

(b) A written request for a nonexpedited internal appeal; and

(c) If applicable, the completion of a specific form [form(s)], including a medical records release consent form;

2. Time frames for:

a. Conducting a review of an initial decision; and

b. Issuing an internal appeal decision;

3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision; and

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including:

a. [The Title(s)]; and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;

b. [The Clear, detailed decision] in clear, concise and sufficient detail to explain the decision; and

(c) Instructions for requesting an external review or an external review of an appeal:

(i) An external review of an adverse determination upheld by the internal appeal decision, including:

A. Availability of an expedited external review of an adverse determination;

B. Departmental review of a coverage denial upheld by the internal appeal decision; and

C. A sample copy of the internal appeal determination (to be sent in compliance with paragraph (h)(2)(e)(ii)(k) of this subsection, and

(iii) A copy of the policies and procedures, which include:

1. Address and ensure [Prompt] the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, 806 KAR 8:220, and 806 KAR 3:230;

2. Comply with requirements of KRS 304.17A-615 relating to payment if the insurer or private review agent fails to:

a. Provide a timely utilization review decision; or

b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer or private review agent, including verification by:

1. Electronic transmission records;

2. Telephone company logs;

3. Comply with requirements of KRS 304.17A-619, regarding the submission of new claim information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for inpatient and outpatient services in the rendering of review decisions; and

5. Comply with requirements of KRS 304.17A-607(1)(k) [regarding the review and comment on protocols by qualified physicians and other providers], as applicable;

(i) If applicable, a copy of the written materials that provide covered persons, enrollees of limited health service benefit plans, and providers with the following information at the time of enrollment and thereafter upon request, and the mechanism for disseminating the written materials:

i. Their rights, responsibilities, and liabilities in accessing covered services subject to utilization review, including the documentation requirements of KRS 304.17A-615 and identify:

a. When utilization review is required;

b. Who may request utilization review, and

2. Telephonic numbers and hours of operation of the insurer, limited health service benefit plan, or private review agent to whom the insurer, limited health service benefit plan, or private review agent shall be contacted;

3. They are an independent provider, limited health service benefit plan, or private review agent who will be notified by the insurer, limited health service benefit plan, or private review agent who is conducting the internal review of the appeal as to the outcome of the internal review;

4. A written request for an expedited external appeal shall be an adverse determination for the purpose of initiating an internal appeal;

5. The right to file a written complaint relating to utilization review with the office in accordance with KRS 304.17A-613(6); and

6. Except for an enrollee of a limited health service benefit plan, a covered person:

a. Appeal rights to challenge an adverse determination, including:

(i) Internal appeals, including expedited appeals, and

(ii) External reviews, including expedited reviews, and

b. The right of a covered person to request office review of a
coverage denial after an insurer or private review agent upholds a coverage denial, an internal appeal, in accordance with KRS 304.17A-617(2)(g), and
(b) A written complaint shall include any information relating to the complaint.
(2) Upon receiving a copy of the complaint, an insurer (and a letter from the office shall be sent to the insurer, including an insurer offering a limited health service benefit plan, or private review agent, shall provide a response in accordance with KRS 304.17A-613(8)(a), including (1) a written response to the complaint, if applicable, including a time-frame for each action (time-frames for these actions). (3) The office shall be sent to the insurer, including an insurer offering a limited health service benefit plan, or private review agent, shall provide a response in accordance with KRS 304.17A-613(8)(a), including (1) a written response to the complaint, if applicable, including a time-frame for each action (time-frames for these actions). (4) An insurer or private review entity fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.
(5)(4) The number, [severity,] recurrence, and type of complaints, as identified in subsection (1) of this section, if any, shall be cloned by the department (office) in reviewing an application for [issuance or renewal of] registration pursuant to (as required by) KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer or private review agent shall:
(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person(s) to request an internal appeal within a [time-frame of] at least sixty (60) days following [after] receipt of a denial letter;
(2) Provide written notification of an internal appeal determination(s) as required by KRS 304.17A-617(2)(a), (b), and (g), which shall include the:
(a) Title[,] and, if applicable, the license number, state of licensure and specialty or subspecialty certifications[, if any,] of the person performing the review;
(b) Elements required in a letter of denial in accordance with 806 KAR 17.230, Sections 4 and 5, if applicable;
(c) Position and telephone number of a contact person who may provide information relating to the internal appeal [review]; and
(d) Date on which the decision was rendered;
(3) Maintain written records of all internal appeal decisions received, including the:
(a) Reason for the internal appeal;
(b) Date[ of request] that the internal appeal was received by the insurer or private review agent;
(c) Date of the internal appeal decision;
(d) Internal appeal decision; and
(e) Information required by Section 4(1)(i)5(6)(14)(4)(1)(6) of this administrative regulation;
(4) Reissue a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan. (1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:
(a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and
(b) Include provisions which:
1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within a [time-frame of] at least sixty (60) days after receipt of a notice of adverse determination or coverage denial; and
2. Require the limited health service benefit plan [make a decision and] provide a written internal appeal determination within thirty (30) days following [after] receipt of a request for an internal appeal; and
(2) A notice of adverse determination or coverage denial shall include a disclosure of the availability of the internal appeal.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARFS, October 14, 2008)


RELATES TO: KRS 304.2-100, 304.2-230, 304.2-310, 304.17A-600, 304.17A-621-304.17A-631, 304.17A-700
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629
NECESSITY, FUNCTION, AND CONFORMITY: [EC-2004-743, signed July 8, 2004, created the Office of Insurance] 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-629 requires the office to promulgate administrative regulations regarding the Independent External Review Program. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).
(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.
(3) "Authorized person" is defined in KRS 304.17A-600(2).
(4) "Commissioner" means Commissioner of Insurance.
(5) "Coverage denial" is defined in KRS 304.17A-617(1).
(6) "Covered person" is defined in KRS 304.17A-600(4).
(7) "Department" means Department of Insurance.
(8) "Office" means the Office of Insurance.
(9) "Electronic" or "electronically" is defined KRS 304.17A-700(6).
(10) "Final" means as defined in KRS 304.17A-600(5).
(11) "Financial hardship" means the.
(12) "Insurer" is defined in KRS 304.17A-600(8).
(13) "Provider" is defined in KRS 304.17A-600(13).
(14) "Renewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An Insurer shall:
(a) Disclose to a covered person in a clear, concise, (nonconsumer friendly) written format the following information concerning an external review:
1. [At the time of enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g)];
2. The availability of an external review, including expected external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-621(3);
3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:
   a. Whether the appeal shall be in writing;
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

b. How to complete a necessary form[any form], including a medical records release form or[a] written authorization of representation;

c. Applicable time frames;

d. The position and telephone number of a contact person who can provide additional information about an external review; and

e. Additional[any other required] documentation that may be necessary to initiate an external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice from an insurer that, pursuant to KRS 304.17A-617(6), the insurer has elected not to provide coverage and to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed[up] by a brief[an abbreviated] written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which[by which] the following types of external review shall be provided:

a. Nonexpected external review in accordance with KRS 304.17A-623(3), (4) and (6); and

b. Expected external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing[the time] for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost[the] of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

a. An oral request followed up by a brief[an abbreviated] written request, or a written request for an expedited external review;

b. A written request for an expedited external review;

c. The completion[any specific forms] of a request by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records[and-ease] form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of compliance with a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. The telephone number and position of a contact person of the insurer who may provide information relating to an external review;

z) A statement relating to the confidential treatment of medical records and information relating to the external review; and

7[a] A statement of the availability[and a description] of a complaint process through the department[office] relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(10);

(c) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

1. Written authorization of representation; and

2. Consent to release medical records to the independent review entity;

(e) Determine[make a determination] whether an external review is warranted in accordance with KRS 304.17A-623(3) and (10), and notify the person who requested the external review of the [determination of that determination within the following time periods]

1. For expected reviews, within twenty-four (24) hours of receipt of the request, pursuant to[the time to comply with the] KRS 304.17A-623(11); or

2. For nonexpected reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted[and if prompt];

1. By telephone, request acceptance of an independent review entity, which was selected pursuant to KRS 304.17A-623(7) (except for a case of omission, nonresponse and non-compliance), from a list of certified independent review entities maintained[by the department of health] by the department of insurance;

2. Notify the independent review entity by telephone that the insurer shall forward the following documents to the independent review entity:

a. The written consent[request] of the covered person authorizing release of all[only necessary] medical records as required by KRS 304.17A-623(4);

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6, incorporated by reference in 086 KAR 17 002(67/04);

(g) Upon a determination that a nonexpedited external review is warranted;

1. By telephone, request acceptance of an independent review entity, which was selected pursuant to KRS 304.17A-623(7) [except for a case of omission, nonresponse and non-compliance], from a list of certified independent review entities as identified in paragraph (f) of this subsection;

2. Within three (3) business day of a determination, deliver to the independent review entity the documentation as identified in paragraphs (f) through (h) of this subsection;

a. Consent of the covered person authorizing release of all necessary medical records as required by KRS 304.17A-623(4);

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6(67/04);

(h) Upon assignment of an external review entity, complete and send to the department[office], an Assignment of Independent Review Entity Form, HIPMC-IRE-2 [form], incorporated by reference in 086 KAR 17 002(67/04);

i. Within one (1) business day, send to the assigned external review entity;

(j) Within three (3) business days for a nonexpedited external review:

1. Upon receipt of new clinical information submitted pursuant to KRS 304.17A-623(6)(b), immediately send a copy of the new clinical information as applicable to the:

a. Covered person or authorized person;

b. Provider;

c. Independent review entity;

2. Consider reversal of the internal appeal decision based upon the new clinical information, and if the internal appeal decision is reversed:

a. Provide written notice of the reversal as applicable to the:

i. Covered person or authorized person;

(ii) Provider;

iii. Independent review entity;

iv. Office;

b. Pay the fee in accordance with Section-3(18)(b) of this administrative rule;

(k) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13);

(l) Upon receipt of an invoice relating to external review[and a statement of services rendered and costs], pay the independent review entity within thirty (30) days;

(m) Maintain a written record of each external review for a period of not less than five (5) years pursuant to 086 KAR 2:070, Section 1, and

(n) Upon written notice of termination of an independent review entity pursuant to Section 3(19)(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs...
Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

1. Accept a request for assignment unless:
   - A conflict of interest exists;
   - Confidentiality issues exist; or
   - Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable.

2. Upon receipt of a request for assignment from an insurer:
   - Determine if a condition of subsection (1)(a) through (c) of this section exists; whether a conflict of interest exists, confidentiality requirements of an insurer can be met and an appropriate reviewer is available; and
   - Within twenty-four (24) hours of receipt of a request for assignment:
     - Provide written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or:
       - A conflict of interest exists;
       - Confidentiality requirements of an insurer cannot be met; or
       - Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable.

3. Within twenty-four (24) hours of receipt of the request for assignment:
   - Provide written notification to an insurer of the acceptance of an assignment:
     - No conflict of interest exists;
     - Confidentiality requirements of an insurer can be met; and
     - An appropriate reviewer is available; and

4. Maintain a written record of:
   - Whether the external review relates to an adverse determination of a coverage denial, which requires resolution of a medical issue;
   - The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and
   - Whether the external review is expected or nonexpected;
   - For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;
   - Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make the decision pursuant to KRS 304.17A-625(1), (2), and (7)(b)(3) on the receipt of new clinical information from a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, immediately send a copy of the new clinical information to the following, as applicable:
     - A covered person or authorized person;
     - A provider; and
     - An insurer;
   - Have a reviewer with expertise in:
     - Health insurance benefits and contracts, and who shall serve as a reviewer with respect to health care professional reviewers in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and
     - Health care, and who shall:
       - Conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and
       - Meet the following requirements:
         - Be active in a state of the United States; and
         - Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice; and
         - Have at least five (5) years of experience in the specialty or subspecialty of the external review; and
         - Hold current board certification by:
           - The American Board of Medical Specialties if the reviewer is a medical doctor;
           - The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;
           - The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or
           - Other recognized health professional board pursuant to board in accordance with KRS 304.17A-627;
     - Establish criteria in accordance with KRS 304.17A-627 for:
       - Selection of a qualified reviewer, including the initial verification and revocation every three (3) years of credentials of the reviewer;
       - Ensuring that an appropriate;
         - Reviewer performs the external review; and
       - Ensuring that an appropriate number of reviewers are used for the external review; and
     - Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;
     - Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:
       - Hold a current license to practice medicine in a state of the United States;
       - Provide guidance for the medical aspects of the external review process; and
       - Oversee the medical aspects of the;
         - Quality management program; and
       - Oversee the medical aspects of the Reviewer credentialing program;
     - Establish and implement criteria for determination of the need for a time extension pursuant to:
       - Twenty-four (24) hours to render a decision in an expected external review, in accordance with KRS 304.17A-623(12) and (13); and
       - Fourteen (14) calendar days to render a decision in a nonexpected external review, in accordance with KRS 304.17A-623(13);
     - Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include:
       - Title, profession license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;
       - Date the decision was rendered; and
       - A statement that;
         - The decision shall be final and binding on the insurer; and
       - If dissatisfaction with the decision, a comment, question, or complaint may be submitted in writing to the department; and
       - Within two (2) business days of rendering a decision, provides written notification of the decision to:
         - The Covered person or authorized person, treating provider, and insurer; and
         - Department by:
           - Copying the department on the written notification to the covered person; and
           - Completing an External Review Decision Notification Form, HPMCP-RE-3, incorporated by reference in 808 KAR 190-021.
17.052(07/04), within two (2) business days of rendering a decision;
(11) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, 806 KAR 3:220, and applicable state and federal law;
(12) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:
(a) All documentation relating to the external review pursuant to KRS 304.17A-625(1)(a)(904.17A-626(4));
(b) The independent review entity's decision regarding each issue identified in the external review request;
(c) The name, credentials, and specialty or subspecialty of the reviewer;
(d) Medical records[evidence] and information considered during the review;
(e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;
(f) A copy of the covered person's health benefit plan [relevant policy-language of the insurer, including any relevant contractual definition of medical necessity];
(g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue, and the internal appeal decision; and
(h) A copy of all correspondence and communication between the independent review entity, the reviewer and any other person regarding the external review, including a copy of the final external review decision [letter/letter);
(13) Provide toll-free telephone access that:
(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone where the services under review are in dispute; and
(b) Allows for:
1. Receiving after-hours requests for external review, and
2. Acting upon expected external requests in accordance with KRS 304.17A-623(12);
(14) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:
(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and
(b) A copy of the delegation or subcontract agreement [whereby the external review function is delegated or subcontracted];
(15) Establish and maintain a written quality assurance program in accordance with KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:
(a) Scope and objectives;
(b) Program organization;
(c) Monitoring and oversight mechanism; and
(d) Evaluation and organizational improvement of external review activities, including:
1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;
2. The implementation of an action plan to improve or correct an identified problem; and
3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;
(16) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1, as incorporated by reference in 806 KAR 17:005(07/04), in writing to the department for approval. A change shall not become effective until approved by the commissioner, executive director;
(17) Submit a new application for certification if requested by the department upon notification of a material change in the application information as required by KRS 304.17A-627(2);
(18) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:
(a) A completed external review of:
1. A coverage denial, which requires resolution of a medical issue; and
2. An adverse determination; and
(b) An incomplete external review;
(19) Immediately terminate an external review and provide notice of the termination to the department, and, if appropriate, the insurer requesting the external review, as appropriate, and the covered person if:
(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process; or
(b) A review of a coverage denial or adverse determination is received in writing from the insurer;
(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disputes, war, civil disturbances, riots, or complete or partial disruptions of facilities;
(20) If more than one (1) reviewer is utilized in making a decision:
(a) Render an overall decision based upon the majority decision of the reviewers; or
(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;
(21) Implement a written policy and procedure for each aspect of an external review process, including:
(a) Processing of the request for assignment of an external review from an insurer;
(b) Receipt and maintenance of medical records and information from insurer;
(c) Ensuring access to [a sufficient number of] appropriate qualified reviewers pursuant to subsection (6) of this section;
(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;
(e) Rendering a timely decision and issu[es] notice of the decision;
(f) Ongoing monitoring and evaluation of the performance of a reviewer;
(g) Monitoring and oversight of a delegated external review function, if any;
(h) Billing and collection of fees for external review, including:
1. Filigree of the covered person; and
2. Cost of external review [borne by] the insurer;
(i) Collecting and reporting data;
(j) Receipt and consideration of new clinical information;
(k) Termination of external review; and
(l) Response to a request for information relating to a complaint filed with the department [or by others]; and
(22) Conduct an annual [peer review] formal program for training reviewers, which:
1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and
2. Describes the policies and procedures of the independent review entity, as applicable; and
(b) Provide a written record of the training to the department upon request.

Section 4. Application Process for Certification to Perform External Reviews. (1) To perform an external review, an independent review entity shall be certified in accordance with requirements as established in KRS 304.17A-627(4), and this administrative regulation[4];
(2) To be certified to perform an external review, an independent review entity shall:
(a) Complete and submit to the department, an [application for certification of an Independent Review Entity, HIPMC-IRE-1, as incorporated by reference in 806 KAR 17:005(07/04)];
(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation[4], made payable to the Kentucky State Treasurer]; and
VOLUME 35, NUMBER 5 — NOVEMBER 1, 2008

(c) Enclose with the application for certification, written document which supports compliance with the requirements of an independent review entity as established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(2) An independent review entity certification[certificate] shall expire on the second anniversary of the certification date unless the certification[certificate] is renewed by the independent review entity, which submits submitting a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department[office] shall:

(1) Give written notice of its actions and

(2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department[office] requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response respond in writing to the complaint and submit to the department[office] within ten (10) business days of reception of the letter from the office the following:

(a) Any information relating to the complaint;

(b) If applicable, corrective actions to address resolve the complaint[, if any], including time frames for these actions; and

(c) A mechanism to evaluate the corrective action, if applicable.

(3) Upon receipt of the written response of the independent review entity, the department[office] shall:

(a) If applicable, take action pursuant to [in accordance with] KRS 304.17A-625(16)[304.17A-625(16)] and

(b) Notify the complainant of the department’s findings and action taken, if any.

Section 9. Department[Office] Investigations. The commissioner[executive director] may[, upon his own action,] conduct an investigation[investigations] of an independent review entity pursuant to KRS 304.2-100 and 304.2-229.

Section 10. Reporting Requirements. An independent review entity shall complete and[, as a condition of certification,] submit to the department[office] by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report (Report-Reporting Requirements for Independent Review Entities), HIPMC-IRE-4, Incorporated by reference in 809 KAR 17 005 (7/09).

Section 11. Cessation of Participation[Operations to Perform External Review]. (1) Upon a decision to terminate participation in the independent[existence] external review program as established in KRS 304.17A-651(operatives in Kentucky), an independent review entity shall:

(a) Immediately notify the department[office] in writing of its decision to cease accepting new assignments; and

(b) Except for reasons beyond its control, submit[Submit] the following to the department[office] at least thirty (30) days prior to termination[ceasing operations or as soon as practicable]:

1. Written notification of the termination[cessation—operation], including,

   a. [the] Date of termination[cessation] and
   b. [the] Number of pending external reviews with corresponding assignment dates; and

2. A written action plan for terminating participation[cessing operations], which shall be approved by the office and include:

   a. The projected date for rendering a decision for each external review which has not been acted upon; and
   b. The projected date of submission of the Data-Reporting Requirements for Independent Review Entity, HIPMC-IRE-4 (3/00).
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(2) Dextropropion;
(3) Fenfluramine;
(4) Fenproporex;
(5) Mazindol;
(6) Mefenoxor;
(7) Modafinil;
(8) Pemoline, including organometallic complexes and che-lates;
(9) Phentermine;
(10) Pipradrol;
(11) Sibutramine; and
(12) SPA (()-1-dimethylamino-1,2-diphenylethane).

Section 2. Depressants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Carisoprodol;
(5) Chloralhydrate;
(6) Clozapine;
(7) Clonazepam;
(8) Clorazepate;
(9) Cloxazolam;
(10) Delorazepam;
(11) Diazepam;
(12) Dichloralphenazone;
(13) Estazolam;
(14) Ethyl iodonate;
(15) Flunitrazepam;
(16) Flurazepam;
(17) Halazepam;
(18) Haloxazolam;
(19) Haloperidol;
(20) Ketazolam;
(21) Lorazepam;
(22) Lormetazepam;
(23) Mebutamate;
(24) Medazepam;
(25) Methohexitol;
(26) Mizoram;
(27) Nimetazepam;
(28) Nitrazenzam;
(29) Nordiazepam;
(30) Oxazepam;
(31) Oxoxolam;
(32) Phenazepam;
(33) Prazepam;
(34) Quazepam;
(35) Temazepam;
(36) Tetrazepam;
(37) Trazolam;
(38) zaleplon;
(39) Zolpidem; and
(40) Zopiclona.

Section 3. Fenfluramine. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains any quantity of fenfluramine [the following substance], including its salts, isomers, whether optical, positional, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

Fenfluramine.

Section 4. Narcotics. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition
to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, as set forth below:

(1) Butorphanol;
(2) Dextropropoxyphene (Alpha(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);
(3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and
(4) Nalbuphine.

Section 5. Central Analgics. The Cabinet for Health and Family Services designates as a Schedule IV controlled substance material, compound, mixture, or preparation which contains any quantity of Tramadol or its salts.

SADIOA REYNOLDS, ESQ, Inspector General
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.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008
ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(Amended After Comments

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

RELATES TO: KRS 229.021, 229.031(1), 229.071(1), [229.081], 229.091, 229.101, 229.131, 229.171, [229.180(4)], 229.351

STATUTORY AUTHORITY: KRS 229.071(2), 229.081, 229.091(1), 229.151(1), 229.171(1), 229.180(4)

NECESSITY, FUNCTION, AND CONFORMITY: Except as
provided in KRS 229.011(4), KRS 229.171(1) authorizes the
authority to maintain [give 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 229.160(1)(a)
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 ac-
cordance with eligibility requirements established by administrative
regulation. KRS 229.071(2) authorizes the Authority to grant an-
nual licenses to applicants for participation in shows and exhibitions
if the Authority judges that the financial responsibility, expe-
rience, character, and general fitness of the applicant are suf-
cient that participation by the applicant is in the public inter-
est. KRS 229.071(3) authorizes the authority to establish annu-
al license fees for licensed individuals. KRS 229.091(1) re-
quires that every licensee be such that participation by the ap-
plicant 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 license issued is subject to admin-
istrative regulations promulgated by the Authority. This admin-
istrative regulation establishes license requirements and fees for cer-
tain participants in competitive contact sports such as boxing and
mixed martial arts shows and exhibitions in the Commonwealth.

Section 1. (1)(a) The Authority shall license all persons ap-
proved to participate as an amateur contestant in a mixed martial
arts show.

(b) Applicants who have competed in a professional mixed
martial arts bout shall not be licensed as an amateur and
shall [may] not compete against an amateur.

(2)(a) Participants shall apply for a license [passeport through a
licensed promoter] using the ["Application for Amateur Mixed
Martial Arts Contestant License"

(3)(a) Applications shall be mailed to the Authority by the pro-

moter within twenty-four (24) hours of issuance.

(4) Contestants over the age of thirty-nine (39) shall not be

issu ed a license [passeport] until they have complied with Section
26 of this administrative regulation and have been approved by the
Authority.

(5)(a) The fee for the amateur license [passeport] shall be

twenty-five (25) dollars.

(4)(6) License renewal shall be ten (10) dollars.

(6) An amateur license [passeport] shall expire on December 31 of the year in which the license is [they are] is-

su ed.

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

(a) Judge for mixed martial arts: fifty (50) dollars—fifty (50)
dollars.

(b) Timekeeper for mixed martial arts: fifty (50) dollars—fifty
(50) dollars.

(c) Physician for mixed martial arts: $300 up to ten (10) sche-
dule bouts, $350 eleven (11) to fifteen (15) scheduled bouts,
and $400 over fifteen (15) scheduled bouts—[2850]

(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[s] less than thirty (30)[seventeen (17)] and fourteen (14) calendar days
before the requested date for approval by the Authority using the
["Amateur MMA Show Notice Form"]-[0466]

(2) There shall be [not] 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)(a) 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.

(b) Notice of any change in a program or any substitutions in

a show shall be filed immediately with the Authority.

(c) The program shall not have more than two (2) fifteen

minute intermissions.

(a) If the Authority determines, after reviewing a contestant's

fight history that a proposed bout may not be reasonably

competitive, the bout shall[contests fight history, that a pro-
bout would not be reasonably competitive, the bout may be]

denied.

(3) Amateur mixed martial arts contestants age thirty-nine

(39) and older[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 re-
demand is made before the commencement of the show.

Section 7. (1) All shows shall be visibly recorded and re-

tained by the promoter for one (1) year.

(2) Upon request of the Authority, the promoter shall pro-

vide the visual recording of a show to the authority. 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
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.

(a) [No] Alcohol or smoking shall not be allowed in the areas
under the control of the Authority.

(b) 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:
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(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 employee of the Authority prior to the commencement of the show;
(c) A rope shall be at least one (1) inch in diameter;
(d) A rope shall be wrapped in a clean, soft material and drawn taut;
(e) A rope shall be held in place with vertical straps on each of the four (4) sides of the ring; and
(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) Shall be at least one (1) inch in thickness using slow recovery foam matting,
(b) Extends over the edge of the platform; and
(c) Shall be 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.

1. (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 not less than 250 square feet.
   2. This request shall be submitted to the executive director not 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 not be smaller than twenty (20) feet wide and not less 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.
3. Material that tends to gather in lumps or ridges shall not be used.
4. 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.
5. 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.
6. 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.
7. Any metal portion of the fenced area shall not be protrusion or obstruction on any part of the fence surrounding the area in which the contestants are competing.
8. The fenced area shall have at least one (1) entrance.
9. There shall not be protrusion (s) or obstruction (s) on any part of the fence surrounding the area in which the contestants are competing.
10. A bell or horn shall be used by the timekeeper to indicate the time.

Section 11. A promoter shall provide for the timekeeper to indicate the time.
(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 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 to determine accuracy.

Section 14. (1) 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.
(2) At any time, disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 15. (1) All emergency medical personnel and portable medical equipment shall be stationed at ringside during the show.
(2) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests.
(3) If the ambulance is required to leave the event for any reason, a contest shall not be allowed to continue until an ambulance shall be once again present and medical personnel shall be at ringside.
(4) Proof of ambulance coverage being scheduled shall be provided to the authority not less than two (2) business days before the show.

Section 16. (1) There shall be at least one (1) physician licensed by the authority at ringside before a bout shall be allowed to begin.
(2) The physician shall not be 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. (1) A promoter shall provide insurance for the promoter(s) contestant for any injuries sustained in the mixed martial arts show.
(2) The minimum amount of coverage per contest shall be $5,000 health and $5,000 accidental death benefits.
(3) A certificate of insurance coverage shall be provided to the authority not less than two (2) business days before the show.

Section 18. (1) A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts show is being held.
(2) This notice shall include the date, time, and location of the show.
(3) A copy of this notice shall be filed with the authority not 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.
Section 20. Unless the Authority approves an exception:
(1) A non-championship contest or exhibition of mixed martial arts shall not exceed three (3) 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 three (3) 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 ninety (90) seconds (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 shall be established in Table A. (See 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>166 to 174 lbs.</td>
</tr>
<tr>
<td>Light Heavyweight</td>
<td>175 to 185 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) Weight gain: In excess of three (3) pounds is not permitted for a contestant who weighed in at 145 pounds or less; and
(b) Weight gain: 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 who weigh 145 or less shall wear gloves that are a minimum of four (4) ounces.
(3) Contestants who weigh 146 and above shall wear gloves that are a minimum of six (6) ounces and a maximum of eight (8) ounces.
(4) Both contestants shall wear the same glove weight.

Section 23. The following shall be prohibited:
(1) "Battle royal" as defined in 201 KAR 27:005, Section 1(2);
(2) Use of excessive grease or another substance that may handicap an opponent.

Section 24. (1) A 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) A promoter who allows a professional to compete against a 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 shall be 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 administrative suspension in another jurisdiction resulting from a violation not established in this administrative regulation 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 mixed martial arts competition for sixty (60) days.
(5) Any mixed martial arts contestant who has suffered a technical knock out (TKO) may, at the discretion of the inspector, be prohibited from mixed martial arts competition for up to thirty (30) days. In determining how many days to prohibit the contestant from mixed martial arts competition, 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 from mixed martial arts competition after competing in a contest with a maximum of three (3) bouts within a twenty four (24) hour period.
(7) Day one (1) of the rest period shall commence on the first day following the twenty four (24) hour period.

Section 26. (1) 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 as a ringside physician.
(2) The results of the physical and a medical authorization or release shall then be completed and submitted to the Authority not later than fifteen (15) business days prior to the scheduled bout.

Section 27. (1) 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 other than that which appears on his license.
(3) All contestants and officials shall check in with the authority not less than one (1) hour prior to the commencement of the event.

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

Section 29. (1) A contestant shall not use a belt that contains any metallic substance during a bout.
(2) 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 shorts of the opponent shall be of distinguishing colors;
(2) Not wear shoes or any padding on his feet during the contest;
(3) Wear a groin protector;
(4) Wear a mouthpiece.

Section 31. The Authority may request that 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
court, or the Authority may impose a fine upon the
court, or both.

Section 32. (1) An opponent who has made a commit-
ment 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 not 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 Au-
thority, and further disciplinary action may be taken by the Author-
ity.

Section 33. An opponent mixed martial arts promoter, official, or
contestant whose license is suspended or revoked due to discip-
lineary actions shall be prohibited from attending all mixed martial
arts events sanctioned by the authority during the term of the sus-
pension 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 the worse opponent proportionately less.
(b) If the round is even, each contestant receives ten (10)
points.
(c) That fraction of points shall not 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 shall be conclusive, and, if there is
not a majority, the decision shall be a draw.
(4) After the authority's representative has checked the
scores, the representative shall inform the announcer of the
decision.

Section 35. The following moves are prohibited in amateur
mixed martial arts shows:
(1) Eligible strikes to the head shall not be allowed at anytime.
(2) Knee to the head shall be permitted but only used and delivered from a standing posi-
tion.

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) Feathering;
(6) Ground 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 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 opponent's flesh;
(13) Grabbing the crotch;
(14) Kicking the head of a grounded opponent;
(15) Kneeing 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 refe-
eree;
(27) Attacking an opponent after the bell has sounded the end
of the period of unarmed combat;
(28) Disregarding the instructions of the referee;
(29) Intimidating, excluding avoiding contact with an opponent,
to accidentally 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) When a contestant fouls his opponent during an
amateur mixed martial arts show, the referee may penalize him by
deducting points from his score depending on the type and se-
vity of the foul, regardless of whether or not the foul was inten-
tional.
(b) The referee shall determine the number of points to be
deducted in each instance and shall base the determination on the
severity of the foul and its effect upon the opponent.
(2) When the referee determines that it is necessary to de-
duct points or because of a foul, the referee shall warn the
offender of the penalty to be assessed.
(3) The referee shall, as soon as possible, 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 a foul shall be
deducted in the round in which the foul occurred and
shall not be deducted from the score of any subsequent round.

Section 38. (1) If a bout of amateur mixed martial arts is
stopped because of an accidental foul, the referee shall determine
whether the contestant has been fouled and 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
conclusive 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 the 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 con-
test" 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 five
(5) or 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 com-
pleted 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 second round of a bout that is scheduled for
five (5) or more than three (3) 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.
(c) Any contestant committing a foul may be issued a viola-
tion by the inspector or employee of the Authority, based on the
seriousness of the foul:

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; or
(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; or
(d) Draw, including:
1. Unanimous draw;
2. Majority draw; or
3. Split draw; or
(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." (3) Within twelve (12) hours of the conclusion of the event, the promoter shall:
(a) Submit the results of the amateur MMA event to the Authority;
(b) Ensure the passing of each contestant's event 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 mouthpiece;
(5) A contestant shall wear a jersey top and shorts;
(a) Breast protector;
(b) Groin protector, and
(c) Headgear;
(6) 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.
(b) These results shall 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 Mixed Martial Arts Contest License," R. 2009(MMA-Passport-4/08);
(b) "Amateur MMA Show Notice Form," R. 2009(MMA-Notice-4/08); and
(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: October 15, 2008
FILED WITH LRC: October 15, 2008 at noon
CONTACT PERSON: Larry Bond, Kentucky Boxing and Wrestling Authority, 500 Meri Street, Capital Plaza Tower, 6th Floor, Office 601, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

- 1204 -

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 229.150 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 these 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 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 statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state or local governments affected by this administrative regulation: All licensed athletes who participate in amateur mixed martial arts events, licensed promoters who arrange these shows and exhibitions and the officials who regulate those 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 provide, for their license, 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 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 licenses, insurance coverage, medical equipment and personnel.
(c) As a result of compliance, what benefits 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 hand at each 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 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: A new license fee is established for amateur MMA contests. The initial license fee is $25 and the yearly renewal fee is $10.

(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) TIERRING: is tiering applied? Tiering is not applied in this administrative regulation, as there is no reason to discriminate among amateur mixed martial arts participans 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)? 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?

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:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:010. Operation[Certification] of wastewater systems by certified operators[system operators].

RELATES TO: KRS 224.10-100, 224.10-110, 224.70-100,
224.70-110, EO 2008-507, 2008-531 [224.73-110]

STATUTORY AUTHORITY: KRS [224.01-1]40,224.10-100,
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. EO 2008-507 and 2008-531, effective June 18, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation requires wastewater treatment plant and collection systems that accept domestic sewage to be under the primary responsibility of 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 Operators, certification of Wastewater Operators, registration relating to the issuance and renewal of certificates, disciplinary action, 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 under the primary responsibility of [operator] 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 under the primary responsibility of 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 under the primary responsibility of a certified operator holding an active Class I, 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 and one-half (7 1/2) million gallons per day shall be under the primary responsibility of a certified operator holding an active Class III or IV treatment certificate;

(4) A treatment plant with a design capacity in excess of seven and one-half (7 1/2) million gallons per day shall be under the primary responsibility of a certified operator holding an active Class IV treatment certificate; or

(5) A wastewater treatment plant at a school shall be under the primary responsibility of a certified operator holding an active 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 under the primary responsibility of a certified operator as follows:

(1) Collection systems with greater than 5,000 linear feet of sewer line that transport wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day shall be under the primary responsibility of 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 that transport wastewater to 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 under the primary responsibility of a population-served of 1,500 to 60,000 individuals shall be operated by a certified operator holding an active Class II, III, or IV collection certificate;

(3) Collection systems that transport wastewater to a treatment plant with a design capacity of more than two (2) million gallons per day, but less than or equal to seven and one-half (7 1/2) million gallons per day shall be under the primary responsibility of a population-served of 60,001 to 500,000 individuals shall be operated by a certified operator holding an active Class III or IV collection certificate;

(4) Collection systems that transport wastewater to a treatment plant with a design capacity in excess of seven and one-half (7 1/2) million gallons per day shall be under the primary responsibility of a population-served of 500,001 to 1,500,000 individuals shall be operated by a certified operator holding an active Class IV collection certificate; or

(5) A wastewater collection system at a school shall be under the primary responsibility of an operator holding an active:

(a) Class I, II, III, or IV collection certificate;

(b) Class I, II, III, or IV treatment certificate; or

(c) Limited certificate;

(6) Collection systems with not more than 5,000 linear feet of sewer line that transport wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons.
per day, shall be operated under the primary responsibility of a certified operator with an active:
(a) Class I, II, III, or IV collection certificate; or
(b) Class I, II, or III treatment certificate; or
(c) Collection systems that transport wastewater containing
    domestic sewage to a treatment plant owned by another
    person shall use population-served for determination of the
    appropriate collection system certificate.

(e) 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.

(f) 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.

(c) Collection systems with a population served of 15,001 to
    50,000 individuals or greater shall be operated by a certified operator
    holding an active Class III or IV collection certificate.

(d) 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.

(e) Collection systems with more than 5,000 linear feet
    of sewer line that serve a population of not more than 1,500,
    shall be operated under the primary responsibility of a certified
    operator with an active:
    1. Class I, II, III, or IV collection certificate; or
    2. Class I, II, III, or IV treatment certificate. (Is not required to
    be operated by an operator holding an active collection certificate.)

Section 3. Certified Operator Availability. (1) The facility shall
ensure that a certified operator with primary responsibility
shall be able to be contacted by phone within thirty (30) minutes from
being called. (Is not required to be operated by an operator holding an active collection certificate.)

(2) The facility shall ensure that a certified operator with
primary responsibility shall be capable of being onsite:
(a) Within two (2) hours if the certified operator with prima-
    ry responsibility is required to have a Class I or Limited certifi-
    cate; or
(b) Within one (1) hour if the certified operator with prima-
    ry responsibility is required to have a Class II, III, or IV certifi-
    cate.

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 dis-
played on the wall. [Definition: The following terms have the
meanings set forth below unless the context clearly indicates other-
wise.

(4) "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
classifications of water supply and wastewater systems, and assists
authorities in establishing new certification programs and upgrading
existing programs.
(5) "Board" means the Kentucky Board of Certification of
Wastewater System Operators.
(6) "Cabinet" has the meaning given in KRS 224.01.010.
(7) "Certificate" means a certificate of competency issued by
the secretary or his designee to the person who has met the
requirements for the specific operator certification as set
out by the administrative regulation.
(8) "Certified operator" means a wastewater operator em-
ployed 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 the administrative regulation.
(9) "Division" means the Division of Water.
(10) "Operator" means any person involved in the operation of a
wastewater system.
(11) "Primary responsibility" means having the authority to con-
duct the procedures and practices necessary to ensure that the
wastewater system or any portion thereof is operated in accor-
dance with accepted practices, laws and administrative regulations
of the Commonwealth, or to supervise others in conducting these
practices.
(12) "Secretary" has the meaning given in KRS 224.01.010.
(13) "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 sup-
ervised.

(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 cabi-
net.

(3) Facilities whose classification changed from Class I to
Class I as a result of revisions to Section 8 of the administrative
regulation as in effect on the effective date of the administrative
regulation shall employ a certified Class II or higher operator by

(4) Certificate display. If a wastewater system office is avail-
able 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 responsibili-
ties and with consideration given to the minimum standards and
guidance 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 expe-
rience requirements;
(3) Review and approve comments to the cabinet on proposed
wastewater treatment plant operator certification administrative
regulations;
(4) Review and make recommendations to the cabinet on pro-
posed training courses and commissary designed to provide continu-
uing education to certified operators;
(5) Review and accept the cabinet in the preparation of exami-
nations;
(6) Review and provide comments to the cabinet on proposed
charges 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 the cabinet regarding discipli-
nary actions for certified operators who fail to comply with the ap-
propriate laws and administrative regulations.

Section 4. Application and Examinations for Certification. (1) Ap-
plication. An individual desiring to be certified shall file an appli-
cation with the cabinet and pay the applicable fee specified in Sec-
Section 11 of the administrative regulations. Applications shall be
made on a form provided by the cabinet and incorporated by reference in
Section 11 of the administrative regulations. 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, judgment of the appli-
cants. The cabinet shall administer written examinations, unless the cabi-
net and board grant a waiver to allow an oral exam. Oral exams
may be administered to applicants who meet the minimum qualifi-
cations of Section 10 of the administrative regulation. The cabinet
shall grade the examinations. The cabinet shall post the applications and notify the applicant of the out-
come. Applicants shall achieve a score of seventy (70) 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 semianually at places and times set forth by the cabinet.
The cabinet shall provide adequate notice of these exami-
nations.

(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 of receiving waters and other pertinent matters.

(a) Applicant-Who refuses 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:

(2) Examination: thirty-five (35) dollars.

(3) Renewal of certificate: thirty-five (35) dollars per biennium.

(4) Certification by reexamination: thirty-five (35) dollars.

(5) Certification of a new operator: not to exceed thirty-five (35) dollars plus renewal fee.

(6) Fee for training sessions conducted by the cabinet: not to exceed five (5) dollars per contact hour.

(7) Fees shall not be returned to applicants who do not pass the examination.

(8) 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 renewal period.

Section 6. Issuance of Certificates. (1) Certification upon satisfactory fulfillment of the requirements of the administrative regulations 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 competency. If information related to the operator's employment or mailing address changes from the application file 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) Duration 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 that of a higher classification.

(b) Certificates shall expire on June 30 of odd-numbered years. Certificates may be renewed without examination, if the certified operator is in good standing, upon completion of the required training hours outlined in subsection (7) of this section and upon submittal of an application for renewal and applicable renewal fees. Application for renewal shall be made on a form provided by the cabinet and incorporated into this administrative regulation. If the renewal application and fee are not received by the cabinet by June 30, the certificate shall be canceled and shall not be reinstated without completion of the training required in subsection (7) of this section and payment of a reinstatement fee as provided in Section 6 of this administrative regulation. Expiring certificates shall continue in force and all administrative proceedings shall be continued on the same record as the current certificate prior to submitting a new application. Experience earned under a limited certificate shall not count toward fulfillment of the qualifications for other classifications.

(c) 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.

(d) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his 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.

(6) Termination of certification. Certificates shall terminate if not reissued for two (2) consecutive renewal periods. Limited certification shall terminate if held for the renewal period after the examination date if not reviewed. If a certificate terminates, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified.

(7) 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 another country, if the requirements for certification of operators under which the person's certificate was issued are no less stringent than the requirements for certification set forth in KRS Chapter 324 and the administrative regulations 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 courses, short courses, trade association meetings, and on the job training courses. However, at least one-half (1/2) of the training required for re-certification shall be in process control and operation or in the basic science related to these 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) On the date for determining whether to approve training, other than that 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 course hours and fees 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) of the subsection for all or portions of a class of operators as identified in Section 9 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, determines that the certified operator has practiced fraud or deception in obtaining certification or filing cabinet-mandated reports; has not used reasonable care or judgment in the performance of duties; has failed to apply knowledge in the performance of duties; or is incompetent, unable or unwilling to properly perform duties.

(a) Suspension. The disciplinary action shall be determined by the cabinet in accordance with the procedures provided in subsection (2) of this section, and may include the following sanctions depending on the severity, duration, and number of the violations.

(b) Final decision. The sanctions may include, but are not limited to:

(c) Probation for a specified period of time, not to exceed one (1) year;

(d) 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;

(e) Temporary or permanent revocation of the operator's certificate; temporary revocation shall not be less than one (1) year or more than four (4) years in duration; or

(f) Civil or criminal penalty against the operator.
(2) Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicative or frivolous, shall be reviewed at the next regularly-scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges involved. 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 and the board's recommendations. Upon completion of the review, the cabinet will initia the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised in writing of the action and the reasons 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 10-4 of this administrative regulation. An action taken by the cabinet pursuant to this section shall not preclude the operator from pursuing additional civil or criminal action.

(4) Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet will monitor the operator's work activities. At the end of the sanctioned 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 procedures. An operator who considers himself aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(3).

Section 8. Classification of Wastewater Systems. Wastewater systems shall be classified in one of five classes. These classifications shall be made according to population served, type of treatment process, character and volume of waste 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 treatment or use makes the system more or less 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 or circumstances 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 60,000 gallons per day.

(2) Class II—Systems with a design capacity more than 60,000 gallons per day, but less than or equal to 200,000 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 one (1) million gallons per day.

(4) Class IV—Systems with a design capacity in excess of one (1) 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 license category shall correspond 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 4(5) of this administrative regulation.

(1) Certification 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
   2. One (1) year of acceptable operation of a wastewater system.

(b) Class II:
   1. Completion of high school or GED efficiency, and
   2. Two (2) years of acceptable operation of a wastewater system.

(c) Class III:
   1. Completion of high school or GED efficiency, and
   2. Three (3) years of acceptable operation of a wastewater system.

(d) Class IV:
   1. A baccalaureate degree in a standard curriculum in engineering, allied sciences, or equivalent, and
   2. At least five (5) years of acceptable operation of a wastewater system. Three (3) years of the required experience shall be in a Class II or higher wastewater system with at least two (2) years of primary responsibility for a Class II or higher system.

(e) 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 or educational equivalencies, substitutions may be allowed as follows:

(a) If applicable, experience may be substituted for a portion of the educational requirements.

(b) If applicable, education may be substituted for a portion of the experience requirement.

(3) Partial credit may be given for operating experience in maintenance, laboratories or other work of wastewater systems and allied trades.

(4) To establish how much experience will be accepted, the board shall determine whether the work performed required some knowledge and experience of the operation of the system. In wastewater systems where responsibility is divided, supervisors of important divisions may be credited with having primary responsibility.

(5) 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 before the board.

(6) 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.

(7) Experience applied to educational requirements shall not be applied to the experience requirement.

(b) If applicable, education may be substituted for a portion of experience requirements as specified above:

(1) One (1) year of college work limited to courses in environmental engineering, environmental technology or related sciences may be considered as equivalent to one (1) year of experience.

(2) Education substituted for experience shall not reduce the requirements of actual operating experience to less than six (6) 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.

(c) Substitutions for formal education may be as follows: Training credits for board-approved operator training schools, seminars and technical courses 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 eighteen (18) 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 credits substituted for the education requirement shall not be used as continuing education for certificate renewal.

Section 11. Documents Incorporated by Reference for 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 1999.


LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 13, 2008
FILED WITH LRC: October 13, 2008 at 3 p.m.
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 Gruzesky, Director

(1) Provide a brief summary of:
(a) What this 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 requirements 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 224.10-100, that these districts are being funded, that these districts are being constructed for wastewater treatment plants.
(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 requirements pertaining to the examination and certification of operators are moving to a new chapter, 401 KAR Chapter 11, which is regulated by the Division of Compliance Assistance.
(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 224.47-130 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:
A. Individuals:
- Approximately 1,600 certified operators.
B. Businesses:
- Approximately 900 businesses with wastewater treatment plants.
C. State and Local Governments:
- 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) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will have to use certified operators for their plants and for certain collection systems.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Under this regulation, there is no expected additional cost.
(c) As a result of compliance, what benefits will accrue to 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.
(6) 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.
(7) Provide an assessment of whether an 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? 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? 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 subse-
quent years? No additional cost is expected.

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 Compliance Assistance
(Amended After Comments)

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,
224.73-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-
110 authorizes the cabinet to promulgate administrative regulations
concerning the certification of wastewater operators. This adminis-
trative regulation establishes definitions applicable to the certifica-
tion of wastewater operators.

Section 1. Definitions. [The following terms shall have the
meanings set forth below unless the context clearly indicates oth-
ervise.]
(1) "Applicant" means a person who has submitted an applica-
tion to take an examination for certification.
(2) "Board" means the Kentucky Board of Certification of
Wastewater System Operators.
(3) "Cabinet" is defined by [has the meaning given it in KRS
224.01-010(9)].
(4) "Certificate" means a certificate of competency issued by
the cabinet stating that the operator has met the requirements for
the specific operator classification as established [set] by this
chapter.
(5) "Certified operator" means an individual who holds an ac-
tive certificate.
(6) "Core content" means the information identified as essen-
tial by the board for purposes of certification examination and con-
cluding 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 insure that the wastewater
treatment plant or collection system is operated in accordance
with accepted practices and with KRS Chapter 224 and 401 KAR Chap-
ters 5 and 11.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 13, 2008
FILED WITH LRC: October 14, 2008 at 4 p.m.
CONTACT PERSON: Julia Keys, Regulations Coordinator,
Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort,
Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email
Julia.Keys@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 adminis-
trative regulation establishes the definitions applicable to the certifica-
tion of operators.
(b) The necessity of this administrative regulation: This adminis-
trative 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 authorizes the cabinet to im-
plement 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 adminis-
trative regulation provides clear definitions for terms applicable to
wastewater system operators.

(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendments contained in this proposed adminis-
trative regulation are being made to conform to KRS Chapter 13A
drafting requirements and do not impose any new standards or fiscal
impacts.
(b) The necessity of the amendment to this administrative
regulation: These amendments are being provided to conform
to KRS Chapter 13A drafting requirements.
(c) How the amendment conforms to the content of the author-
ing statutes: These amendments are being provided to conform
to KRS Chapter 13A drafting requirements and are not related to
any other authorizing statutes.

(3) If the amendment will assist in the effective administration
of the statutes: These amendments are being provided to con-
form to KRS Chapter 13A drafting requirements and do not impose
any new standards or fiscal impacts.

(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this adminis-
trative regulation: Certified wastewater treatment plant operators
will be affected by this new administrative regulation. There are ap-
proximately 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 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: Certified operators do not need to take
any action in response to this administrative regulation.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (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
affected by the definitions, they may experience benefits as a re-
result of having a clear understanding of the terms applicable to their
certification.

(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: No additional costs are anticipated.
(b) On a continuing basis: No additional costs are anticipated.
(c) What is the source of the funding to be used for the im-
plementation 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 regula-
tion, 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 estab-
lished any fees or directly or indirectly increased any fees: This
administrative regulation will not directly or indirectly establish any
fees or assess a fee.

(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, 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 definitions applicable to the certification of certified operators. No fiscal impacts are anticipated.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(Amended After Comments)

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 wastewater 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.

During the evaluation of 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,

4. Assist the cabinet in drafting examinations for the certification of operators;

5. Review and provide comments to the cabinet on proposed fees for the training and certification of operators;

6. Review applications for reciprocity and recommend to the cabinet the acceptance or denial of the application based on the criteria in 401 KAR 11:050, Section 108; 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: October 13, 2008
FILED WITH LPC: October 14, 2008 at 3 p.m.
CONTACT PERS: 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 Keasley, 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.

b. How this administrative regulation conforms to the content of the authorizing statute: 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 statute: 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 the existing administrative regulation: The amendments contained in this proposed administrative regulation are being made to conform to KRS Chapter 13A drafting requirements and do not impose any new standards or fiscal impacts.

b. The necessity of the amendment to this administrative regulation: These amendments are being proposed to conform to KRS Chapter 13A drafting requirements.

c. How the amendment conforms to the content of the authorizing statute: These amendments are being proposed to conform to KRS Chapter 13A drafting requirements and are not related to any other authorizing statutes.

d. How the amendment will assist in the effective administration of the statute: These amendments are being provided to conform to KRS Chapter 13A drafting requirements and do not impose any new standards or fiscal impacts.

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 4,800 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 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 will not be directly affected by this administrative regulation. Certified operators do not need to take any action in response to this administrative regula-
(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.

(5) 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.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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.

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 wastewater operators. This administrative regulation establishes standards for the performance of certified wastewater 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.

(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 in which 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 the samples that he collects, prepares, or analyzes so that results shall bear a true representation of water quality.

(2) Proof of certification. While on duty, a certified operator shall carry the cabinet-issued wallet card showing the operator's current certification status.

(3) Maintenance of records. If information related to the operator's employment or mailing address changes from that provided in the application for certification, the certified operator shall provide written notification to the cabinet within thirty (30) days.

HANK LINT, Deputy Secretary
For: LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 14, 2008 at noon
CONTACT PERSON: Julia Keys, Regulations Coordinator, Division of Compliance Assistance, 500 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Keys@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 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 and maintain 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 adminis-
tative 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. A majority of the amendments contained in this proposed administrative regulation are being made to conform to KRS Chapter 13A drafting requirements and do not impose any new standards or fiscal impacts. The amendments also provide clarity to the application of operator ethical responsibilities.

(b) the necessity of the amendment to this administrative regulation. These amendments are being provided to conform to KRS Chapter 13A drafting requirements. In addition, this regulation was clarified to specify that operators are responsible for the quality of sampling results only when they are personally involved in the sample collection, preparation, or analysis.

(c) how the amendment conforms to the content of the authorizing statutes. These amendments are being provided to conform to KRS Chapter 13A drafting requirements.

The amendments conform to all other authorizing statutes.

(d) how the amendment will assist in the effective administration of the statutes. These amendments are being provided to conform to KRS Chapter 13A drafting requirements. In addition, the regulation was clarified to specify that operators are responsible for the quality of sampling results only when they are personally involved in the sample collection, preparation, or analysis.

(e) What is the benefit of the amendment? The number of individuals, businesses, organizations, or state and local governments affected by this new administrative regulation is 1,600 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.

(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this new 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 new administrative regulation or amendment. Certificated operators as well as state and local governments, will refer to this new administrative regulation to determine the standards for the performance of certified operator duties.

(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 not expect to experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Certificated 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.

(g) 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.

(h) What is the source of the funding to be used for the implementation and enforcement of this new administrative regulation? The funding for this new administrative regulation is funded through agency and general funds.

(i) Cost and funding: This new administrative regulation will not increase or decrease any fees.

(j) TIERING: Is tiering 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 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 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 new 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
(Amended After Comments)

**401 KAR 11:030. Wastewater treatment and collection system operators;[-] classification and qualifications [qualification].**

**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 wastewater 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.

1. 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.

2. A Class I treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.
(c) Class I Treatment certification with an Operator in Training designation.
1. A Class I 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 2 million gallons per day.
2. A Class I Treatment operator with an Operator in Training designation shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(d) Class II Treatment certification.
1. A Class II Treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 7 million gallons per day.
2. A Class II Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(e) Class III Treatment certification.
1. 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 (serving a population of less than or equal to 1,600 individuals).
2. 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 of any design capacity.
1. Wastewater collection certifications.
   (a) Class I Collection certification.
      1. A Class I Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day (serving a population of less than or equal to 1,600 individuals).
   2. A Class I Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

   (b) Class II Collection certification.
      1. A Class II Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 2 million gallons per day (serving a population of less than or equal to 1,600 individuals).
      2. A Class II Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

   (c) Class III Collection certification.
      1. A Class III Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 7 million gallons per day (serving a population of less than or equal to 20,000 individuals).
      2. A Class III Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

   (d) Class IV Collection certification. A Class IV Collection operator may have primary responsibility for any 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 11:050(11.040).
1. Education. A [sic] minimum level of education shall not be [sic] required.

(b) Class I Treatment certification.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. One (1) year of acceptable operation of a wastewater treatment plant shall be required.

(c) Class I Treatment certification with an Operator in Training designation.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Experience shall not be [sic] required.

(d) Class II Treatment certification.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Two (2) years of acceptable operation of a wastewater treatment plant shall be required.

(e) Class III Treatment certification.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Three (3) years of acceptable operation of a wastewater treatment plant with a design capacity greater than 50,000 gallons per day shall be required.

(f) Class IV Treatment certification.
1. Education. A baccalaureate degree in a [standard curriculum] in [engineering, science, or related sciences] or equivalent shall be required; and
2. Experience. At least five (5) years of acceptable operation of a wastewater treatment plant shall be required.

(g) Three (3) years of the required experience shall be in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day.

(h) At least two (2) years of primary responsibility in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day shall be required.

(2) The educational and experience qualifications for wastewater collection certifications shall be as follows:

(a) Class I Collection certification.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. One (1) year of acceptable operation of a wastewater collection system shall be required.

(b) Class I Collection certification with an Operator in Training designation.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Experience shall not be [sic] required.

(c) Class II Collection certification.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Two (2) years of acceptable operation of a wastewater collection system shall be required.

(d) Class III Collection certification.
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Three (3) years of acceptable operation of a wastewater collection system with one (1) year of that experience in a wastewater collection system shall be required.

(e) Class IV Collection certification. A Class IV Collection operator may have primary responsibility for any wastewater collection system (of any design capacity).
shall be required; and

2. Experince. At least five (5) years of acceptable operation of a wastewater collection system shall be required.

a. Three (3) years of the required experience shall be in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (7 1/2) million gallons per day serving a population of more than 60,000 individuals.

b. At least two (2) years of primary responsibility in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (7 1/2) million gallons per day may be required serving a population of less than or equal to 60,000 individuals.

(3) Substitutions. The cabinet shall [may] allow the following substitutions for the qualifications specified in subsections (1) and (2) of this section:

(a) Education in environmental engineering, environmental technology, and biological, physical, or chemical sciences shall [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’s degree may substitute for four (4) years of experience.

3. Education in environmental engineering, environmental technology, and biological, physical, or chemical sciences shall [may] substitute for a degree in a related field.

(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. One (1) year of education may substitute for one (1) year of operational 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 shall/will be accepted, the cabinet shall determine the degree of the actual experience needed to perform the duties.

(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) Experince 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. One (1) year of education may substitute for one (1) year of operational 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 shall/will be accepted, the cabinet shall determine the degree of the actual experience needed to perform the duties.

(c) Collection system and treatment experience may be substituted as follows:

1. Four (4) years of collection system experience shall/may be considered equivalent to one (1) year of experience.

2. One (1) year of experience shall/may be considered equivalent to one (1) year of collection system experience.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 13, 2008
FILED WITH LRC: October 14, 2008 at 3 p.m.
CONTACT PERSON: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 554-0232, fax (502) 554-9720, email Julia.Kays@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Aaron Keatley, Director
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 tiering applied? Yes, tiering is applied. Different 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 operator 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 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.

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

6. (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 Explanations: 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 Assistance
(New Administrative Regulation)


RELATES TO: KRS 224.10-110, 224.10-420(2), 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 wastewater 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 "Regulation Form for Exams and Training," and "Education and Experience Document Form," which are incorporated by reference in Section 5 of this administrative regulation, and shall submit them and the certification 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.

(4) If the applicant meets the qualifications, the cabinet shall approve the application and notify the applicant of the scheduled exam date.

(5) Upon the applicant's completion of the examination, the cabinet shall notify the applicant of the exam score.

(6) A score of at least seventy (70) percent is required to pass the examination.

(7) The cabinet shall issue a certificate and a wallet card to the applicant who successfully passes the certification examination.

(b) The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.

(8) 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.

(b) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet.

(b) A request for a reexamination shall be submitted to the cabinet in writing.

(b) 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 not less stringent than the requirements for certification set forth in KRS Chapter 224.73-110 and 401 KAR Chapter 11 (the "Chapter"); and
   (b) The applicant submits an "Application for Reciprocity" form and the reciprocity fee to the cabinet.

Section 2. Duration of Certification. (1)(a) Certifications shall expire on June 30 of odd-numbered years unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Certifications issued on or after January 1 and on or before June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.

(b) 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.

(b) A certification continued under this paragraph shall remain fully effective and enforceable.

(c) 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 opera-
tor 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) A certified operator who is designated an Operator In Training may renew a certification without examination if the operator has satisfied the requirements of subsections (1)(a) and (b) of this section and has acquired one (1) year of acceptable experience prior to expiration of the certification.
(b) Upon renewal, the operator’s certification status shall not continue to [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.

(a) A terminated certification shall not be renewed.
(b) 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)(a) Prior to applying for certification renewal, a certified operator shall complete the required number of cabinet-approved training hours.

(b) A certified operator holding both a treatment and a collection certificate shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for both certificates.

(c) Hours earned prior to certification shall not count toward certification renewal.

(d) Training hours shall expire two (2) years from the date earned.

1.(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; [as amended]

2.(a) 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.

3.(a) 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*] form, which is incorporated by reference in Section 5 of this administrative regulation.

4.(a) 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.

5.(a) 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 paragraph a of this subsection [6] of this section.

6.(a) A certified operator who provides approved training may receive, upon approval of the cabinet, hour-for-hour credit for actual instruction time.

7.(a) [As amended] Cabinet approval of training shall expire two years following the date of approval.

(b) The cabinet, in consultation with the board, shall extend the approval expiration date if:
   1. The provider requests the extension in writing; and
   2. The training has not changed from the previous approval.

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 the operator’s duties in accordance with 401 KAR 11:020.

(2)(a) 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.

(b) If the complaint or violation warrants further investigation, the certified operator shall appear before the board if requested by the board [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 [we] disciplinary action not be taken or recommend that a disciplinary action be taken if the board determines that the certified operator has not satisfactorily performed operator duties in compliance with 401 KAR 11:020.

(4)(a) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.

(b) After completing the review, the cabinet shall initiate the recommended disciplinary action or notify the board as to why an alternative disciplinary action was taken.

(5) A disciplinary action shall be commenced with the severity, duration, and number of the violations. Disciplinary actions may include, but are not limited to:

(a) Probation of the operator’s certification for a specified period of time, not to exceed one (1) 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; or

(d) Civil or criminal penalties;

(e) A combination of the disciplinary actions established in paragraph (a) through (d) of this subsection.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and the operator’s employer by certified mail of the action, the reasons for the action, and the length of time for which the disciplinary action(sanction) shall apply.

(7)(a) A certified operator whose certification has been suspended shall not have primary responsibility during the period that the suspension remains in effect.

(b) 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. Incorporation [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: October 13, 2008
FILED WITH LRC: October 14, 2008 at 3 p.m.
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 Keaty, 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 the 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 224.47-110 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: A majority of the amendments contained in this proposed administrative regulation are being made to conform to KRS Chapter 13A drafting requirements and do not impose any new standards or fiscal impacts. In addition, the regulation was amended in response to public comment to extend the effective dates of a certification that is obtained late in the certification renewal cycle and to reduce the number of continuing education hours required for individuals that hold both treatment and collection certificates.

(b) The necessity of the amendment to this administrative regulation: These amendments are being provided to conform to KRS Chapter 13A drafting requirements. In addition, the changes being made above, will assist certified operators in ensuring that they can renew their license in an efficient and cost effective manner.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments are being provided to conform to KRS Chapter 13A drafting requirements. In addition, the changes being made above, will assist certified operators in ensuring that they can renew their license in an efficient and cost effective manner.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are being provided to conform to KRS Chapter 13A drafting requirements. In addition, the changes being made above, will assist certified operators in ensuring that they can renew their license in an efficient and cost effective manner.

(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 160 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.

(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 not expect to experience any additional cost. Individuals that choose to become a certified collection system operator will incur certification application fees and continuing education costs. Limited license will remain in effect for two years rather than the one year currently provided. This will reduce the need to renew the license as frequently and eliminate the need to retest if continuing education hours are obtained.

(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 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 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: The 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 based on the size of the wastewater treatment and collection systems.

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 operator 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, 224.47-110, 224.73-110. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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 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
(Amended After Comments)


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 wastewater operators. This administrative regulation establishes a fee schedule for wastewater operator certification and for training of wastewater operators that is provided by the cabinet.

Section 1. Fees. (1) Fees for certification of wastewater operators shall be:(a) Certification application fee: $100.
(b) Renewal application fee:
1. Fifty (50) dollars if renewed through the cabinet Web site.
2. $100 if not renewed through the cabinet Web site.
(c) Renewal late fee: $250.
(d) Reciprocity fee: $500.
(e) Each year the cabinet, in consultation with the board, shall set fees for operator training conducted by the cabinet.
(f) The fees in subsection (1) of this section of this administrative regulation are nonrefundable.
(g) 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.
(h) The fees in subsection (2) of this section shall be fully refunded if the training event is canceled by the cabinet.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 13, 2008
FILED WITH LRC: October 14, 2008 at 3 p.m.
CONTACT PERSON: Julia Kays, Registrations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0223, fax (502) 564-9720, email julia.kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keating, Director
(a) Provide a brief analysis of how 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.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments contained in this proposed administrative regulation are being made to conform to KRS Chapter 13A drafting requirements.
(b) The necessity of the amendment to this administrative regulation: These amendments are being provided to conform to KRS Chapter 13A drafting requirements.
(c) How the amendment conforms to the content of the authorizing statutes: These amendments are being provided to conform to KRS Chapter 13A drafting requirements and are not related to any other authorizing statutes.
(d) How the amendment will assist in the effective administration of the statutes: These amendments are being provided to conform to KRS Chapter 13A drafting requirements and do not impose any new standards or fiscal impacts.
(e) 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.
(f) 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:
1. Certification fee: $100
2. Renewal application fee: $50 if renewed electronically; $100 if not renewed electronically.
3. Renewal late fee: $250
4. Reciprocity fee: $500
5. 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.
6. 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.
(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 funds.
(d) In lieu of 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: 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.
(e) 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 for certification. The establishment of fees associated with 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.
(f) TIERING: Is tiering applied? This new administrative regulation applies fees associated with obtaining and maintaining certification.
(g) Amended After Comments: The amendments contained in this proposed administrative regulation are being made to conform to KRS Chapter 13A drafting requirements.

- 1219 -
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 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.

Note: 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. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

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

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RECEIVED TO: KRS 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 158.029, 158.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," October/August 2008 [February 2004], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 158.073(4).

JON E. DRAUD, Commissioner of Education
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 15, 2008 at 8 a.m.
CONTACT PERSON: Kevin C. Brown, Acting Associate Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for the inclusion of students from special populations in Kentucky's state-required assessment and accountability program. Kentucky has a single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for inclusive state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including specific guidance regarding students in special populations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state-wide assessment and accountability programs which will
be applied in all schools as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. §3501 et seq.

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

(a) The school district will change this existing administrative regulation: Proposed changes to this regulation reflect the current assessment and accountability system and new technologies, incorporate federal requirements for students with limited English proficiency, and remove repetitive language or language found in other current regulations. The basic structure of the proposed revised document maintains the same sections.

(b) The necessity of the amendment to this administrative regulation: The reporting rules for both state and federal accountability make the assessment results for student subgroups critical to successful performance in both accountability systems. The use of assessment results in state and federal accountability calculations, school improvement and student information heightens the importance of statewide consistent assessment administration practices.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of the assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment streamlines the regulation. It makes the regulation easier to use in required annual trainings and provides clarity on test administration rules of school and district staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation or amendment, if new or by the change, if it is an amendment, including: The proposed amendment will impact test administration procedures for state-required assessments and the inclusion of students from special populations in state and federal accountability calculations.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public school districts continue to be required to provide training annually on the regulation to appropriate staff administering the state-required assessments to students in special populations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). There are no new cost to school districts.

(c) As a result of compliance, what will accrue to the entities identified in question (3): Kentucky school districts will have improved guidance on the inclusion of special population students in the state-required assessment and accountability programs.

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

(a) Initially: The proposed amendment will require some development of new training materials performed in the normal course of work. No additional costs are expected

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding as appropriated to the Kentucky Department of Education and to school districts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding covers support to schools and districts on test administration issues.

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

(9) TIERING: Is being applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 158.6455 and "The No Child Left Behind Act of 2001", 20 U.S.C. §3501 et seq.

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

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 342.020, 342.035, 342.315
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.200
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of Employment and Training of the Department of Labor and Industry 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 is used primarily to serve a definite medical purpose.

(2) "Hospital" means a hospital, mental hospital, nursing home, hospice, medical care facility, medical assistant, medical receptionist, or any other hospital, medical care facility, or similar type of facility approved by the commissioner.

(3) "Provider of medical services" means a provider of medical services who is an employee of the employer and who is paid by the employer.

(4) "Durable medical equipment (DME)" means an object or material that is used primarily to serve a definite medical purpose.

(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 payer pursuant to this administrative regulation which are billed to payers other than this payer.
VOLUME 35, NUMBER 5—NOVEMBER 1, 2008

administrative regulation on a global basis.

(2) [92] "Global-base" means the practice of submitting a bill for two (2) or more services as one (1) item.

(3) [93] "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 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; and

(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 85, plus the costs of hospital-based physicians and nonphysician anesthetics 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.

(c) [93] The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds or a hospital that is designated as a Level 1 trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent[

(d) [93] A hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent[eighty-five (85) percent], including the return to equity adjustment[seven (7) percent]. The return to equity adjustment is computed by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 85, plus the costs of hospital-based physicians and nonphysician anesthetics 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.

(e) [93] 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;

(f) A disallowance or reduction in itemized or total billed charges shall not be made prior to the application of the hospital's adjusted cost-to-charge ratio unless there has been an allegation that an item or service for which a charge has been made pertains to the treatment of an injury, illness, or disease that is not compensable under KRS 342.020 and a medical fee dispute or motion to reopen is timely filed; and

(g) If part of a bill or service is challenged, then the remainder of the bill shall be paid except for durable medical equipment (DME) and implants which shall be reimbursed at the amounts plus twenty (20) percent or manufactured suggested invoice plus twenty (20) percent, whichever is less.

Section 4. Appeal of Adjusted 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 of Workers' Claims within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of Workers' Claims.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of Workers' Claims 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 of Workers' Claims 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 equal to the average adjusted cost-to-charge ratio of all in-state acute care hospitals[seventy (70) percent] 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 as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned to cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all in-state acute care hospitals; and

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

(a) Seventy (70) percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; or

(b) If no acute care hospital is located in the county of the ambulatory surgery center, seventy (70) percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in contiguous counties to the county in which the ambulatory surgery center is located.

3. All other hospitals not specifically mentioned in subparagraphs 1 and 2 of this subsection shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties[seventy (70) 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 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 this 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.

(2) [93] An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(3) 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(Kentucky) Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25:009.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(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: October 14, 2008
FILED WITH LRC: October 15, 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:
(2) The administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers’ compensation patients.

(3) 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.

(4) How the administrative regulation conforms to the content of the authorizing statute: The administrative regulation sets forth hospital fees and supplies are reimbursed.

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

(6) If 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 original amendment had a reimbursement for DME and implants to be reimbursed at invoice plus 20% or manufactured suggested invoice plus 20%, whichever is less. After consideration, the Department of Workers’ Claims has agreed to recalculate the cost-to-charge ratios to keep all charges at certain levels and avoid enormous markups for individual services. This compromise should protect claimants, insurance carriers, and avoid a huge administrative burden on hospitals.

(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 have 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. The new calculations for the hospital’s cost-to-charge ratios should make the fees fair and reasonable without having a specific carve-out.

(c) How the amendment conforms to the content of the authorizing statute: 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 statute: The certainty of these hospital charges should reduce medical fee dispute issues in this area. Hospitals will avoid administrative costs. Claimants and insurance carriers will get more consistent charges from hospitals.

(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: The Department of Workers’ Claims will calculate the hospital cost-to-charge ratio pursuant to the new calculation.

In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some hospitals will receive a different cost-to-charge ratio which is designed to provide fair and consistent charges.

(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 consistent prices for hospital services. 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; Hospital cost-to-charge ratios are adjusted by new calculation. This should result in more consistent and fair charges.

(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. 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. Pursuant to KRS 342.035, the fee schedule is designed to be similar to commercial costs for similar procedures.

(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.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection and Education Division
(Amended After Comments)


RELATES TO: KRS 91A.080, 91A.0810, 304.3
STATUTORY AUTHORITY: KRS 91A.0810(2)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507,
signed June 6, 2008, and effective June 18, 2008, created
the Department of Insurance, headed by the Commissioner of
Insurance. KRS 91A.0810(2) requires an insurance company to notify
each current policyholder of their rights regarding payment of local
government taxes and further requires the Kentucky Office of
Insurance to promulgate an administrative regulation setting forth the
text of that notice. This administrative regulation prescribes the text
to be used by insurance companies when notifying their current
policyholders of the payment for local government taxes and the
process for appealing a payment. This administrative regulation
also sets minimum standards for the future disclosure of local gov-
ernment taxes to policyholders.

Section 1. Definitions. (1) “Collection fee” means the fee established
in KRS 91A.080(4).

(2) “Insurance company” means an entity holding a certificate
of authority in accordance with KRS 304.3.

(3) “Local government tax” or “tax” means the license fee or
tax imposed by a local government in accordance with KRS
91A.080 and does not include the collection fee.

Section 2. Notice to Current Policyholders. (1) Before December
31, 2008, an insurance company shall provide each policy-
holder who has a policy in effect on July 15, 2008, with a one (1)
time notice that states, “Your insurance premium may be subject to
a license fee or tax imposed by your local government. The
amount of the fee or tax is determined by the local government
where the insured risk is located. The tax and any collection fee, if
included in the charges to you, will be shown on all future renewal
certificates or premium invoices. If you believe that you have been
wrongly charged or have been overcharged the tax, you may contact us for information on how to request a refund or credit for the tax paid.”

(2) An insurance company may include specific contact
information in the notice sent to policyholders pursuant to
subsection (1) of this section.

(3) If a policyholder is insured under more than one (1) policy
with an insurance company, the insurance company may send
one (1) notice to the policyholder to satisfy the requirements of subsection one (1) of this section.

Section 3. Disclosure of Local Government Tax. (1) On and
after December 31, 2008, an insurance company shall disclose to
the policyholder the amount of local government tax being charged
to the policyholder and the taxing jurisdiction to which the tax is
due.

(2) Disclosure of a local government tax shall not be required if
the insurance company does not charge the tax to the policyholder.

(3) The disclosure shall:

(a) Imitate:
1. The amount of tax and any collection fee charged to the
policyholder for each taxing jurisdiction; and
2. The name or abbreviation clearly identifying each corres-
ponding taxing jurisdiction to which the tax is due; and
(b) Be provided to the policyholder:
1. For newly issued policies, on the:

a. Policy;
b. Declaration sheet; or
c. Initial billing; and
2. For renewed policies, on the:
b. [On-the] Renewal certificate upon renewal of the policy; or
b. [2-On-the] Billing for each period for which premium or addi-
tional premium is charged to a policyholder by the insurance
company.

(4)(a) If local government tax is owed to multiple taxing jurisdic-
tions, the disclosure required in subsection (3) of this section shall
list separately each taxing jurisdiction to which tax is owed.

(b) If a credit of a city tax is applied to a county tax pursuant to
KRS 91A.080(12), and the result is that no tax is owed to the
county, the disclosure may include the county in the itemization of tax-
ing jurisdictions required in subsection (3) of this section.

(5) If a collection fee is included in the amount charged to the
policyholder, the disclosure shall state that the amount includes the
tax and a collection fee.

(6)(a) An insurance company may provide the disclosure on a
notice separate from either the renewal certificate or billing if pro-
viding the disclosure on the renewal certificate or billing would
cause the disclosure to be illegible due to type size or other space
considerations.

(b) If the disclosure is provided on a separate notice, the
insurance company shall provide the disclosure to the policyholder at
the same time and in the same manner as the insurance company provides the renewal certificate or billing.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY. October 14, 2008
FILED WITH LRC: October 15, 2008 at noon
CONTACT PERSON: DJ Wasson, Kentucky Department of
Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502)
564-0868, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-
tive regulation prescribes the text to be used by insurance compa-
nies when notifying their current policyholders of the payment for
local government taxes and the process for appealing a payment.
This administrative regulation also sets minimum standards for the
future disclosure of local government taxes to policyholders.

(b) The necessity for this administrative regulation: This adminis-
terative regulation is necessary to implement HB 524, enacted
during the 2008 Regular Session.

(c) How this administrative regulation conforms to the content of the
authorizing statutes: KRS 91A.0810(2) requires the Office of
Insurance to promulgate the text of a one-time disclosure to policy-
holders regarding payment of a local government tax and the policy-
holder’s rights under 2008 RS HB 524. This administrative regula-
tion establishes the text for that disclosure.

(d) How this administrative regulation currently assists or will assist
in the effective administration of the statutes: This administra-
tive regulation provides the text that insurers must provide to
each current policyholder in order to comply with KRS 91A.0810(2).
Additionally, it sets forth the minimum standards for compliance with future disclosure of local government taxes as required by KRS 91A.0810(1).

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

(a) How the amendment will change this existing administrative
regulation: This is a new regulation.

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

(c) How the amendment conforms to the content of the autho-
rizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administra-
tion of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this administra-
- 1224 -
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

tive regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and are subject to local government taxes.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actors that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to provide a notice to current policyholders, as set forth in this administrative regulation, explaining that premiums include charges for local government taxes and providing brief instructions on the process if a policyholder disagrees with the tax charged. Additionally, regulated entities will be required to comply with the minimum standards for future disclosure of local government taxes to policyholders.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The Department requested information regarding the cost impact of implementing this regulation from various interested parties. While all who responded agreed that on-going costs will be minimal, responses regarding initial costs were wide-ranging from minimal to significant, depending on the ease at which an insurer’s automated billing or renewal system can be amended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, regulated entities will provide their policyholders with important information about local government taxes which is intended to aid in the proper collection and remittance of taxes to local governments. Additionally, regulated entities will be able to comply with the provisions of 2008 RS HB 524 in an efficient manner.

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

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(a) Provide an assessment of whether or not increasing the fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding 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 directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and subject to local government taxes.

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 as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.0810

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

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

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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 1:825. 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 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 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) "Capital 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 benchmark cost.

(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) "District part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.29 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" is defined in 42 C.F.R. 400.243 [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 for a set of values expressed as the nth (number of values in the set) root of their product.

(25) "GIP" 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(b)(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 addition to 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 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 apnea spells, incubator 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.

(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 and those requiring 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 reestablish 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. 412.6(b)(1)(1).

(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) "Trending 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 hospital 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)(ii).

(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 Inpatient Acute Care Services 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 rebasing.

(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 forty-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 subsection (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 1. Kentucky Medicaid Cost Center to Medicaid Cost Report Cost Center Crosswalk

<table>
<thead>
<tr>
<th>Kentucky Medicaid Cost Center</th>
<th>Kentucky Medicaid Cost Center Description</th>
<th>Medicare Cost Report Standard Cost Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Routine Days</td>
<td>25</td>
</tr>
<tr>
<td>2</td>
<td>Intensive Days</td>
<td>26, 27, 28, 29, 30</td>
</tr>
<tr>
<td>3</td>
<td>Drugs</td>
<td>48, 56</td>
</tr>
<tr>
<td>4</td>
<td>Supplies or equipment</td>
<td>55, 56, 67</td>
</tr>
<tr>
<td>5</td>
<td>Therapy services excluding Inhalation therapy</td>
<td>50, 51, 52</td>
</tr>
<tr>
<td>6</td>
<td>Inhalation therapy</td>
<td>49</td>
</tr>
</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.

(8) 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 discharge 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 (8) 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 0.6992 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)(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 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.

(d) The department shall determine the 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 use the indicated high volume per diem payment if either the base year covered Kentucky Medicaid inpatient days or Kentucky Medicaid Inpatient day utilization percent meet the criteria established in Table 2 below:

<table>
<thead>
<tr>
<th>Kentucky Medicaid Inpatient Days Range</th>
<th>Kentucky Medicaid Inpatient Days Utilization</th>
<th>Per Diem Payment</th>
<th>Medicaid Utilization Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 3,499 days</td>
<td>$0.00 per day</td>
<td>0.0% - 13.2%</td>
<td>$0.00 per day</td>
</tr>
<tr>
<td>3,500 - 4,499 days</td>
<td>$22.50 per day</td>
<td>13.3% - 16.1%</td>
<td>$22.50 per day</td>
</tr>
<tr>
<td>4,500 - 7,399 days</td>
<td>$45.00 per day</td>
<td>16.2% - 21.6%</td>
<td>$45.00 per day</td>
</tr>
<tr>
<td>7,400 - 10,999 days</td>
<td>$129.00 per day</td>
<td>21.7% - 27.2%</td>
<td>$81.00 per day</td>
</tr>
<tr>
<td>11,000 - 19,999 days</td>
<td>$172.00 per day</td>
<td>27.3% - 100.0%</td>
<td>$92.75 per day</td>
</tr>
<tr>
<td>20,000 and above days</td>
<td>$306.00 per day</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(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;

(b) 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 rebasing; and

2. 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;

(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 acute care hospital claim;
      (iii) A rehabilitation hospital claim;
      b. A rehabilitation claim, defined as follows:
      (i) An acute care hospital claim with rehabilitation DRG;
      (ii) A rehabilitation acute care hospital claim;
      (iii) A rehabilitation hospital claim;
   c. A critical access hospital claim;
   d. A long term acute care hospital claim;
   e. A transplant service claim as specified in subsection (19) of this section of this administrative regulation;
   f. A claim for a patient discharged from an out-of-state hospital;
   g. 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;

2. 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;

   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. The department shall standardize costs using the following formula: standard cost = [((labor related percentage X costs)/Medicare wage index) + (nonlabor related percentage X costs))/X (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 thirty-eight (38) percent.

c. 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 385-390 to a Kentucky-specific DRG:

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;

4. The department shall compute a separate relative weight for a level II, or III neonatal intensity case 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 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 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;

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 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 inpatient transfer from or to an acute care bed to or from a rehabilitation or psychiatric distinct part unit:

(a) The full DRG base payment amount; 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) 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.

(a) 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:

(a) A payment shall be made:
   1. Separately from the per discharge and per diem payment methodologies; and
   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 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 intern and resident amount or the Medicare national average amount shall be applied;
3. The selected per Intern and resident amount shall be multiplied 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 rebased, estimated projected reimbursement in the universal rate year for the not stressful 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 patent 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 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 13 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; and
(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.
(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 Medicaid 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; and
(c) 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.

(3) 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. 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 trended 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. (1) An inpatient admission within
fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement 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 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 acute care 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;
      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 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 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.

(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 1:705.

(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-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 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 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 bad 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 trended 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 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. Federal Financial Participation. A provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision.

Section 19. 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 20. 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: October 15, 2008
FILED WITH LRC: October 15, 2008 at 10 a.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) 564-8611.

(1) 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 services. Previously, the Department for Medicaid Services 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) sections:

(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 amendment to this administrative regulation 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 adequacy of 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 adequacy of availability of neonatal care for Medi-
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

caid 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 new, or by the change, if it is an amendment, including:

(a) List the actors 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.

(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, matching funds of general fund appropriations and hospital provider tax funds pursuant to KRS 142.303, 205.636, 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) Tiering: Is tiering 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 cabinet, by administrative regulation, to comply with a requirement that may be imposed of 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 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 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 stricter, 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 affected 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Revised After Comments)

907 KAR 3:205. Hemophilia Treatment Reimbursement and Coverage Via the 340B Drug Pricing Program.

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, subtitle vi, 256b(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) "Federal financial participation" is defined in 42 C.F.R. 400-203.

(7) "Recipient" is defined in KRS 205.845119.

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 via 42 U.S.C. 701(a)(2).

(b) Submit the following to the United States Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), 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;

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, subtitle vi, 256b(e)(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.
Owen (502) 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: The amendment after comments is necessary to clarify that recipients have freedom of choice of provider and to maintain the viability of the Medicaid program by clarifying that policies are contingent upon the provision of federal financial participation by the Department.

(b) The necessity of the amendment to this administrative regulation: The amendment after comments is necessary to clarify that recipients have freedom of choice of provider and to maintain the viability of the Medicaid program by clarifying that policies are contingent upon the provision of federal financial participation by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by clarifying that recipients have freedom of choice of provider and by rendering policies contingent upon federal financial participation consistent with KRS 205.520(3).

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying that recipients have freedom of choice of provider and by rendering policies contingent upon federal financial participation consistent with KRS 205.520(3).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: 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 entity who desires to participate as a CHDTC in the 340B drug pricing program must comply with and meet the corresponding federally-established requirements. Individuals receiving hemophilia treatment will continue to have the freedom to choose their provider. Each may choose to receive hemophilia treatment via the only center currently known to qualify as a CHDTC or via an entity reimbursed via the Medicaid pharmacy program for hemophilia treatment rather than via the 340B drug pricing program.

(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 expected to be 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.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) initially anticipated that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually. That expectation was based on the assumption that approximately 37 individuals would participate in the 340B drug pricing program. Subsequent to the initial filing of the administrative regulation, DMS learned that the number of Medicaid individuals served by the entity is approximately 65. Therefore, DMS anticipates that savings could also increase proportionately to the increased number of individuals served. DMS emphasizes, though, that even though more individuals are currently being served by the entity, utilization could always change as individuals receiving hemophilia treatment via the Medicaid program have and will continue to have freedom of choice regarding provider. No individual will be required to only receive hemophilia treatment via a 340B drug pricing program.

(b) On a continuing basis: DMS initially anticipated that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually. That expectation was based on the assumption that approximately 37 individuals would participate in the 340B drug pricing program. Subsequent to the initial filing of the administrative regulation, DMS learned that the number of Medicaid individuals served by the entity is approximately 65. Therefore, DMS anticipates that savings could also increase proportionately to the increased number of individuals served. DMS emphasizes, though, that even though more individuals are currently being served by the entity, utilization could always change as individuals receiving hemophilia treatment via the Medicaid program have and will continue to have freedom of choice regarding provider. No individual will be required to only receive hemophilia treatment via a 340B drug pricing program.
(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 appropriation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 regulations 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 205.5005 and 205.5606.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS initially anticipated that the amendment could save DMS approximately $200,000 ($139,000 federal funds/$61,000 state funds) annually. That expectation was based on prior utilization of individuals – approximately 37 - who received hemophilia treatment via the only known CHDTC pursuing participation in the 340B drug pricing program. Subsequent to the initial filing of the administrative regulation, DMS learned that the number of Medicaid individuals served by the entity is approximately 65. Therefore, DMS anticipates that savings could also increase proportionately to the increased number of individuals served. DMS emphasizes, though, that even though more individuals are currently being served by the entity, utilization could always change as individuals receiving hemophilia treatment via the Medicaid Program have and will continue to have freedom of choice regarding provider. No individual will be required to only receive hemophilia treatment via a 340B drug pricing program entity.

DMS understands that the majority of individuals treated via the particular hemophilia treatment center have been patients of the center since their initial diagnosis which, in some cases, is since birth with very few seeking treatment elsewhere despite having a choice. Presumably, though not certainly, these individuals would continue receiving hemophilia treatment at the entity.

DMS also notes that the savings accounts for the loss of rebate dollars as drugs provided by 340B entities are ineligible for rebates.

(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 this administrative regulation saving rather than costing additional monies.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 2008

JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Control Policy
Kentucky Agency for Substance Abuse Policy
(AMENDMENT)

10 KAR 7:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program and start-up funding.

RELATES TO: KRS 15A 340, 15A 342, 15A 344(12-334, 42-334), Chapter 13B, 45A.005-45A.020, 45A.005-
45A.009, 45A.010, 45A.075, 45A.130, 45A.145, 45A.210, 45A.230-
45A.235, 45A.480, 45A.695-45A.705, 45A.725, 222.211, 248.723
STATUTORY AUTHORITY: KRS 15A 342(19)(42-332(48)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS
15A 342(42-332) requires the Kentucky Agency for Substance Abuse Policy (KY-ASAP) to promulgate administrative regulations
to develop a statewide strategic plan to reduce the prevalence of
tobacco use and drug and alcohol abuse among both the youth
and adult populations in Kentucky. This administrative regulation
establishes: the mechanism for the distribution of start-up funds for
the implementation of the approved long-term community strategy,
the incentives to encourage formation of multicounty advisory and
coordination boards, the composition of a local board, and reporting
requirements.

Section 1. Definitions. (1) "initial fiscal agent" means an entity
that shall have a permanent representative on a local board and a
financial structure that currently receives funding from state or
federal government.

(2) "Kentucky Agency for Substance Abuse Policy or "KY-
ASAP" means the agency established at KRS 15A 344(1) to
(3)(4-334(11-11)).

(3) "Local Board" means that entity described at KRS
15A 344(1)(14-334(1)).

Section 2. General. (1) KY-ASAP shall develop proposal
instructions with advice from the following:
(a) KY-ASAP Board;
(b) Cabinet for Health and Family Services, Department for Mental Health
and Mental Retardation Services;
(c) Instructions shall be contained in the Kentucky Agency for
Substance Abuse Policy (KY-ASAP) Community Readiness
Instrument, incorporated by reference.

(3) If a local board fails to comply with KRS 15A 344(14-334), the
Executive Director of KY-ASAP shall notify the chairman of the
local board by letter that the existing board may be abolished.

(4) An adverse action letter to a local board chairman shall
comply with the notice requirements of KRS Chapter 15B.

Section 3. Local Board Membership. (1) A local board
representing more than one (1) county shall insure that each county
is represented on the local board when requesting appointment
for local board members.

(2) Membership of a single county local board shall be no less
than fifteen (15) and no more than twenty (20) members.

(3) Membership of a multicounty local board shall be no less
than fifteen (15) and no more than thirty (30) members.

(4) Membership of a single county local board for a county with
a population exceeding 250,000 shall be no less than fifteen (15)
and no more than thirty (30).

(5) Each county of a multicounty local board shall have mem-
ber representation.

(6) The permanent membership of a local board shall include the:
(a) County judge executive or designee;
(b) Executive director of a community mental health center or
designee;
(c) Executive director of a health department or designee;
(d) Coordinator of a family resource or youth services center;
(e) Superintendent of a local school district or designee; and
(f) Service Region Administrator of the Cabinet for Families
and Children, Department for Community Based Services or de-
signee.

(7)(6) A nonpermanent board member shall be selected to fill
remaining seats from the following areas:
(a) Business leaders;
(b) Religious leaders;
(c) Judicial system;
(d) Law enforcement;
(e) Media;
(f) Health care;
(g) Group with funds to provide alcohol, tobacco, and other
drug prevention;
(h) Group with funds to provide alcohol, tobacco, and other
drug treatment;
(i) Local leaders in the area of alcohol, tobacco, and drug
prevention;
(j) Member of existing health or related strategic planning initia-
tives; and
(k) University or local college that serves the county.

(8) Representatives appointed under any paragraph in this
section, excluding subsection (6)(a) of this section, shall not
comprise more than ten (10) percent of the total board mem-
bership.

(9) Representation from health departments and communi-
ty mental health centers shall be equivalent.

Section 4. Local Board Bylaws. Requirement. (1) A local board
shall include the following in written bylaws:
(a) Definition of officers and membership, and instructions for
their selection;
(b) An organizational chart;
(c) Description of the responsibilities of officers;
(d) Description of procedures for decision making;
(e) Policy for officer rotation;
(f) Establishment of meeting times at a regular hour and date;
(g) Description of procedure for dispute resolution; and
(h) Requirements for:
1. Preparation of a written agenda for a meeting;
2. Provision of a standard orientation for new members;
3. Distribution of meeting minutes to members prior to meet-
ings;
4. Selection of a fiscal agent that receives state or federal
funding, excluding the initial fiscal agent specified in Section 7(1) of this
administrative regulation; and
5. Selection of fiscal agent to provide necessary insurance
coverage for KY-ASAP local board activities.

(2) The membership requirements of KRS
15A 344(14-334) or Section 3(6)(a) of this administrative
regulation are not met, the KY-ASAP Executive Director shall send writ-
ten notification to:
(a) The convening agency, prior to or following board designa-
tion; and
(b) The fiscal agent and the chairperson of the board made
known to KY-ASAP by the board, following designation.

(3) A local board shall immediately notify KY-ASAP upon
membership changes and shall include changes in membership in
the semiannual report required by KRS 15A 344(14-334(3)).

Section 5. Application Process. (1) In order to approve start-up
funding in accordance with Section 6 of this administrative regula-
tion, a local board shall submit an application to KY-ASAP.

(2) If an applicant, during an initial submission period, includes
a county also specified in another application, the applications
duplicating counties shall be returned to the applicants for resolu-
tion.

(3) If application time frame does not allow for resolution of an
overlapping county issue and this overlap remains in the final ap-
plications submitted, the applicants shall be issued a certified letter
from KY-ASAP requesting the organizers to reapply during the next
application cycle.

(4) The following process shall apply to an entity seeking to
qualify as a local board:
(a) The applicant shall submit a letter of intent to begin the KY-
ASAP local board and strategic plan development process;
(b) KY-ASAP shall respond to a letter of intent within fifteen (15) calendar days of receipt;
(c) The applicant shall then submit a community readiness document according to instructions in the "Local Board Announcement," incorporated by reference.
(5) For an applicant accepted into the program, payment of the initial lump sum shall require completion of the following:
(a) An approved community needs and resource assessment of existing or proposed strategic plans that address alcohol, tobacco, and other drug abuse prevention or treatment;
(b) A system structure plan that details local board development and activities;
(c) A list of permanent local board members in accordance with Section 3 of this administrative regulation;
(d) A list of nonpermanent local board members in place at the time of application submission;
(e) If the local board encompasses more than one (1) county, a letter of support from the judge executive each county affected;
(f) If a local board includes a city of the first or second class, a letter of support from the city's mayor;
(g) A written notice sent from the executive director to the initial fiscal agent:
1. Indicating approval; and
2. Including a letter of intent to contract in compliance with applicable sections of KRS Chapter 45A;
(h) The contract shall specify:
1. Obligations of the parties;
2. Services to be provided;
3. Requirement for fund repayment;
4. Result of failure to meet contract provisions; and
5. Signature of the initial fiscal agent.
(6) Final lump sum payment shall be made following a fiscal review of the local board pertaining to:
(a) Fiscal review of the local board’s use of initial start-up funding;
(b) Implementation of the long-term community strategic plan; and
(c) Local board activity, including election of chairman and completion of appointment of board members.

Section 6. Start-Up Funding. (1) In order to insure funding is received by local boards without unnecessary delay, KY-ASAP shall pay start-up funding in two (2) lump sum payments.
(2) Lump sum payments shall be used to develop and implement the long-term community strategy.
(3) No more than fifty (50) percent of the total start-up funds shall be used prior to the KY-ASAP executive director’s approval of the long-term community strategic plan.
(4) An initial lump sum payment may be made when at least one (1) more than half of the membership has been appointed to the board, if all other conditions are met.

Section 7. Start-Up Funding Payment. (1) The initial fiscal agent, upon receipt of notice of local board designation, shall submit a letter of agreement to KY-ASAP to serve as permanent fiscal agent.
(2) KY-ASAP shall award payments to a designated local board through that board’s selected fiscal agent, to the extent funds are available, as follows:
(a) $50,000 for a single county with a local board;
(b) An Incentive of $110,000 for a single local board that coordinates a two (2) county local board;
(c) An Incentive of $175,000 for a single local board that coordinates three (3) or more counties; or
(d) $200,000 for single local board that coordinates a multicounty area with a combined population of 500,000 or greater.

Section 8. Local Board Reporting. (1) A local board shall report semiannually to KY-ASAP in accordance with KRS 15.344(2)(d) on the following dates:
(a) January 1 [March-1]; and
(b) July 1 [September-1].
(2) KY-ASAP shall forward a copy of each report to the KY-ASAP Board.

Section 9. Incorporation by Reference. (1) The following materials are incorporated by reference:
(a) "Kentucky Agency for Substance Abuse Policy (KY-ASAP) Community Readiness Instrument, 2001," as incorporated by reference; and
(b) "KY-ASAP Local Board Announcement, 2002-1"
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Agency for Substance Abuse Policy Office, 125 Holmes Street, 888-8 Main Street, Suite 7-A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VAN INGRAM, Acting Director
APPROVED BY AGENCY: October 15, 2008
FILED WITH LRC: October 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2008 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business December 1, 2008 to:
CONTACT PERSON: Leigh K. Meredith, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 554-8234, fax (502) 564-6585.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Leigh Meredith (502) 564-8234
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation governs the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program through oversight by the Office of Drug Control Policy. The regulation establishes the requirements on proposals for the creation of a KY-ASAP local board; the composition of local KY-ASAP board membership and bylaw; the procedures for submitting funding applications; and the funding reporting requirements for local KY-ASAP boards.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344, effective June 26, 2007.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 15A.342, this regulation governs the operations of the Kentucky Agency for Substance Abuse Policy Program, through oversight by the Office of Drug Control Policy.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides direction and information to the Office of Drug Control Policy, its employees, and the general public concerning the duties, responsibilities, and processes of local KY-ASAP boards.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the KY-ASAP Program’s current practices and reflects the statutory authority cited for this administrative regulation found in KRS 15A.340, 15A.342, and
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 affected by this administrative regulation? State Government: Office of Drug Control Policy, Local Government: KY-ASAP boards and local government entities serving as the fiscal agent for each local KY-ASAP board.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.340, 15A.342, 15A.344.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? This program has been funded through the Tobacco Settlement Agreement Program for several years and no new programs are created.
(d) How much will it cost to administer this program for subsequent years? This program has been funded through the Tobacco Settlement Agreement Program for several years and additional funding should not be required to support these amendments.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): None
Expenditures (+/-): The Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy, distributes its allocation of Tobacco Settlement Agreement funds down to local boards through a request for proposal (RFP) process. Each local board (currently 75 local boards representing 113 counties exist) after ascertaining its communities' needs and resources as they relate to alcohol, tobacco and other drug issues, submits a proposal for funding to address those issues. Factors used in determination of local board funding consist of compliance issues; conformity to applicable Kentucky Revised Statutes and Kentucky Administrative Regulations; the spending proposal as it relates to the local board's strategic plan; the spending proposal as it relates to the mission of KY-ASAP; the performance of the local board; and the fiscal responsibility of funds that have been allocated previously to the local board. The amount of the funding award will in part be based on how well the local board has documented their need and how this award will address the board's need.
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Control Policy (Amendment)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.332 requires the Kentucky Agency for Substance Abuse Policy (KY-ASAP) to promulgate administrative regulations to sustain a statewide strategic plan to reduce the prevalence of tobacco use and drug and alcohol abuse with both the youth and adult populations in Kentucky. This administrative regulation establishes standards to maintain designated KY-ASAP local boards and the mechanism for distribution of designated funds for the continued implementation of the approved long-term community strategy.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program,
Section 1. Definitions. (1) "Good standing" means compliance with applicable statutes, administrative regulations, and contracts, and shall be determined by KY-ASAP with advice from the Office of Drug Control Policy/Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse. (2) "Kentucky Agency for Substance Abuse Policy" or "KY-ASAP" means the agency established at KRS 15A.340(1) to (3), 15A.342 to (9). (3) "Local board" means that entity described at KRS 15A.342(1) to (9). (4) "Ongoing funds" means dollars distributed from KY-ASAP for the purpose of supporting the strategic plans of local boards in good standing. (5) "Good standing" means those local boards found in compliance with all applicable administrative regulations, contracts, and other requirements as specified by KY-ASAP and such as determination shall be made by KY-ASAP with the advice from the Office of Drug Control Policy/Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse. Section 2. Proposals from Local Boards for Ongoing Funding. KY-ASAP shall, contingent upon available funds: (1) Review(Develop) Instruction to local boards to follow for submission of proposals for ongoing funding; (2) Review and modify as needed [Develop, rev. by October 15, 2003], a standard form for submission of a request for proposal; and (3) Consult with Kentucky ASAP State Board[the following entities] for general guidance in the distribution of ongoing funds; (a) The KY-ASAP Board; and (b) The Cabinet for Health Services: 1. Department for Mental Health and Mental Retardation Services, Division of Substance Abuse; and 2. Department for Public Health. Section 3. Local Board Reports. Each local board shall include the following information in the semiannual report required by KRS 15A.344(2) to (9) and detailed in 10 KAR 7:010, Section 8: (1) Information regarding the effectiveness, efficiency, and efforts of the program, as required by KRS 15A.344(2) to (9); (2) Detail of expenditures made during the reporting period; (3) Detail of strategic plan implementation; and (4) Recommendations for increased or decreased funding; as required by KRS 15A.344(2) to (9). If a local board fails to submit the required reports: (a) The Executive Director of KY-ASAP shall notify the local board's fiscal agent and chair, by certified letter, of the noncompliance, stating the reasons therefore; (b) The local board may, within forty-five (45) days of the date of notice, submit a plan of corrective action to the executive director; (c) The executive director shall, within thirty (30) days of receipt of a plan of corrective action, respond, in writing; and (d) If the executive director determines that the proposed plan fails to meet the requirements of this administrative regulation, the executive director shall: 1. Present to the KY-ASAP State Board at its next scheduled meeting the finding of noncompliance and the reasons therefore, accompanied by documentation supporting the decision, and 2. Take action to abolish the local board. (e) A local board found in noncompliance, and whose proposed corrective plan is rejected, shall return or reimburse KY-ASAP the amount of funds received during the period of noncompliance, in accordance with the contract executed between the fiscal agent of the local board and the Justice and Public Safety Cabinet, Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy(Cabinet for Health Services, Department for Mental Health and Mental Retardation, Division of Substance Abuse, on behalf of KY-ASAP). (f) A local board aggrieved by a finding of noncompliance may appeal pursuant to KRS Chapter 13B.

Section 4. Application Process. (1) A local board seeking funds for ongoing services shall: (a) In response to an RFP issued by KY-ASAP, submit an application, incorporated by reference, to the KY-ASAP; and (b) Be in good standing at the time of application. (2) If the KY-ASAP approves the application: (a) The KY-ASAP shall notify the fiscal agent and the chair of the qualifying local board; and (b) The fiscal agent shall submit to KY-ASAP a letter of agreement to serve as fiscal agent; and (c) KY-ASAP and the fiscal agent of the local board shall execute a contract in compliance with applicable sections of KRS Chapter 45A, to the extent funds are available. (3) A single contract with a local board shall not exceed the sum of $200,000.

VAN INGRAM, Acting Director APPROVED BY AGENCY: October 15, 2008 FILED WITH LRC: October 15, 2008 at noon PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2008 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall file this request in writing by November 14, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business December 1, 2008 to: CONTACT PERSON: Leigh K. Meredith, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 554-8234, fax (502) 554-6666

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT Contact Person: Leigh Meredith (502) 554-8234 (1) Provide a brief summary of: (a) What this administrative regulation does: The regulation establishes the requirements on proposals for ongoing funding for the Kentucky Agency for Substance Abuse Policy (KY-ASAP) local boards; sets forth reporting requirements and application process for ongoing funding of local KY-ASAP boards. (b) The necessity of this administrative regulation: To conform to the requirements of 15A.340, 15A.342, and 15A.344. (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs the application process; ongoing funding procedures and reporting requirements of the KY-ASAP Program. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides information to the Office of Drug Control Policy and local KY-ASAP boards relating to the procedures for ongoing funding proposals; establishes reporting requirements; and provides the application process for local KY-ASAP boards. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: This amendment updates KY-ASAP’s statutory authority citations and the local KY-ASAP board reporting deadlines to conform to the state fiscal year. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344. (c) How the amendment conforms to the content of the autho-
rizing statutes: This amendment will permit the KY ASAP to amend practices or procedures to ensure the efficient operation of local KY ASAP Boards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information concerning the appropriate statutory citations and the funding reporting requirements for local KY ASAP boards according to the state fiscal year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all 120 Kentucky counties through their local KY ASAP Boards. Additionally, the regulation affects health departments, local schools, fiscal courts, regional prevention centers, and other entities serving as fiscal agent for the local KY ASAP Boards. Likewise, the regulation indirectly affects local community businesses, school systems, health departments, and other community entities by allowing local KY ASAP Boards to provide ongoing funding to these entities to carry out alcohol, tobacco and other drug prevention, treatment and enforcement programs in the community.

(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: Local KY ASAP Boards will have to follow the changes in the policies and procedures relating to reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Changes in this regulation are not expected to increase costs.

As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective administration of local KY ASAP boards’ processes.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Tobacco Settlement Agreement Funds

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

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

9) TIERING: Is tiering applied? No. Tiering is 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? State Government: Office of Drug Control Policy, Local Government: KY ASAP boards and local government entities serving as the fiscal agent for each local ASAP board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.340, 15A.342, 15A.344

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

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

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

(c) How much will it cost to administer this program for the first year? This program has been funded through the Tobacco Settlement Agreement Program for several years and no new programs are created.

(d) How much will it cost to administer this program for subsequent years? This program has been funded through the Tobacco Settlement Agreement Program for several years and additional funding should not be required to support these amendments.

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

Revenues (+)/: None

Expenditures (-): The Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy, distributes its allocation of Tobacco Settlement Agreement funds down to local boards through a request for proposal (RFP) process. Each local board (currently 75 local boards representing 113 counties exist) are responsible for ascertaining its communities’ needs and resources as they relate to alcohol, tobacco and other drug issues, submits a proposal for funding to address those issues. Factors used in determination of local board funding consist of compliance issues; conformity to applicable Kentucky Revised Statutes and Kentucky Administrative Regulations; the spending proposal as it relates to the local board’s strategic plan; the local board’s spending proposal as it relates to the mission of KY ASAP, performance of the local board; and the fiscal responsibility of funds that have been allocated previously to the local boards. The amount of the funding award will in part be based on how well the local boards have documented their need and how this award addresses the board’s need.

Other Explanation:

PERSONNEL CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS 18A.030, 18A.225, 18A.225A

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.225(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.225(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee InsuranceSummary-plan descriptions for public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year handbook and a benefits selection guide, which is a simplified version of the handbook. This shall be effective January 1, 2009.[eleven. Eleven summary-plan descriptions distributed to members of the Public Employee Health Insurance Program; providing specific information on plan coverage, exclusions, and appeal rights.]

Section 1. The Department of Employee Insurance shall distribute or make available the following items to the public employees covered under the self-insured plan:

(1) The 2009 Plan Year Public Employee Health Insurance Program Handbook, which shall include the premiums, employee contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan and

(2) The 2009 Public Employee Insurance Program. Benefits
Selection Guide, which shall be a simplified version of the handbook specifically focused on the 2009 open enrollment period.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "2009 Public Employee Health Insurance Program Handbook", September 2008 edition;
(b) "2009 Public Employee Health Insurance Program, Benefits Selection Guide", September 2008 edition;
(c) Commonwealth of Kentucky, Commonwealth Essential Summary Plan Description, February 2008, edition;
(d) Commonwealth of Kentucky, Commonwealth Enhanced Summary Plan Description, February 2008, edition;
(f) Commonwealth of Kentucky, Commonwealth Select with Health Reimbursement Account (HRA) Summary Plan Description, February 2008, edition;
(g) Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Essential, January 2008, edition;
(i) Summary Plan Description, Commonwealth of Kentucky Health Care Flexible Spending Account, January 2008, edition;
(j) Summary Plan Description, Commonwealth of Kentucky Dependent Care Flexible Spending Account, January 2008, edition;

(2) This material may be inspected, copied or obtained, subject to applicable copyright laws, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: September 12, 2008
FILED WITH LRC: September 15, 2008 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2008 at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of Intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: Joe R. Cowles, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joe R. Cowles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates, by reference, the 2009 plan year handbook, for health benefit plans offered through the Public Employee Health Insurance Program. The Public Employee Health Insurance Program is commonly known as the Kentucky Employee Health Plan. The 2009 handbook contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. In addition to incorporating by reference the 2009 Public Employee Health Insurance Program Plan Year handbook, the 2009 Public Employee Health Insurance Program Benefits Selection Guide will also be incorporated by reference. The 2009 Public Employee Health Insurance Program Benefits Selection Guide is a simplified version of the handbook and specifically focuses on the 2009 open enrollment.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2009 plan year handbook distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. Said handbook must be filed with the Legislative Research Commission on or before September 15 each year.
(c) Why this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute KRS 18A.2254 by incorporating by reference, the 2009 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, exclusions, and appeal rights for participants of the Public Employee Health Insurance Program for the plan year 2009. The 2009 handbook contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. In addition to incorporating by reference the 2009 Public Employee Health Insurance Program 2009 Plan Year handbook; the 2009 Public Employee Health Insurance Program Benefits Selection Guide will also be incorporated by reference. The 2009 Public Employee Health Insurance Program Benefits Selection Guide is a simplified version of the handbook and specifically focuses on the 2009 open enrollment. The Public Employee Health Insurance Program Summary Plan Descriptions previously incorporated by reference are deleted from this regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit plans to public employees for the 2009 plan year and the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2009 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.
(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2009 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government enti-
ties, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 147,000 eligible employees under KRS 18A.229(1)(a) and a total of 257,000 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment. No additional action is required by entities to comply with the incorporation of these provisions as administrative regulations. This is an amendment. The 2009 plan year Handbook and Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the benefit plans offered for the 2009 plan year. Specifically, the premiums, employer contributions, employer contributions, and a summary of benefits, copay, coinsurance, and deductibles for the 2009 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Complying with this administrative regulation will have a slight cost impact to participating agencies and participants covered under the Public Employee Health Insurance Program. This cost impact is represented in employer and employee contributions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2009 will have comparable benefits to the 2008 plan year.

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

(a) Initially: The Public Employee Health Insurance Program is approximately a $1.3 billion dollar program. Costs of implementing this administrative regulation are believed to be similar to previous plan years.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be similar to previous plan years.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, retirees, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A 2254, 18A.2255, 18A.2257, 18A.2259, 18A 226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and Internal Revenue Code Subsections 105, 106, 125, 152 and 213.

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years. The Public Employee Health Insurance Program is approximately a $1.3 billion dollar program.

(d) How much will it cost to administer this program for subsequent years? The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund. Costs of implementing this program on a continuing basis are believed to be consistent with previous years. By law, an amended administrative regulation will be promulgated in 2010 and each subsequent plan year.

GENERAL GOVERNMENT CABINET
Kentucky Board of Speech-Language Pathology and Audiology
(Amendment)

201 KAR 17:030. License fees and requirements for inactive status.

RELATES TO: KRS 334A.160, 334A.170
STATUTORY AUTHORITY: KRS 334A.080(3), (6)
NECESSITY - FUNCTION AND CONFORMITY: KRS 334A.030(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. KRS 334A.030(3) requires the board to establish requirements for licensure and renewals. This administrative regulation establishes the required fees and the requirements for inactive status.

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, fifty ($50) dollars.

(2) Application fee for a speech-language pathologist license, fifty ($50) dollars.

(3) Combined application fee for a speech-language pathologist and audiologist license, $100.

(4) Application fee for a speech-language pathology assistant license, fifty ($50) dollars.

(5) Initial speech-language pathologist license fee, $100.

(6) Initial audiologist license fee, $100.

(7) Combined speech-language pathologist and audiologist license fee, $200.

(8) Initial speech-language pathology assistant license fee, seventy-five ($75) dollars.

(9) Renewal fee for speech-language pathologist license, $100 (fifty ($50) dollars).

(10) Biennial renewal fee for audiologist license, $100 (fifty ($50) dollars).

(11) Biennial combined renewal fee for speech-language pathologist and audiologist license, $200 ($100 each).

(12) Biennial renewal fee for speech-language pathology assistant, $100 (fifty ($50) dollars).

(13) Biennial renewal fee for grace period extending from January 31 to March 2:
(a) For speech-language pathologist license, $150 (ninety (90) dollars).
(b) For audiologist license, $150 (ninety (90) dollars)
(c) Combined fee for speech-language pathologist and audiologist license, $300 ($150 + $150).
(d) For speech-language pathology assistant, $150 (ninety (90) dollars).
(14) In addition to the biennial renewal fees provided for in Section 1(g) through (10) delinquency fees (renewal) after March 2 shall be:
(a) For speech-language pathologist license, $150 ($150 x 2)
(b) For audiologist license, $150 ($150 x 2).
(c) Biennial combined fee for speech-language pathologist and audiologist license, $300 ($150 + $150).
(d) For speech-language pathology assistant, $150 ($150 x 2).
(15) Application fee for interim licensure for a speech-language pathologist, fifty (50) dollars.
(16) Application fee for interim licensure for an audiologist, fifty (50) dollars.
(17) Combined fee for speech-language pathologist and audiologist interim licensure, $100.
(18) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.
(19) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) dollars.

Section 2. (1) A completed Annual Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:
(a)(4) Renew his license;
(b)(5) Request to return to an active status from an inactive status;
(c)(6) Request, or remain on, an inactive status;
or
(2) Effective subsequent to initial licensure, applicants for renewal of Speech-Language Pathologists, Speech-Language Pathology Assistants, and Audiologists shall, after being divided into groups by odd and even license numbers shall:
(a) Renew for a one (1) year period with applicable prorated fees if their group is up for biennial renewal, and
(b) Renew for the biennium if their group is up for biennial renewal.

Section 3. If an application is filed during the period of December 17 to January 30 and a license issued, the board shall waive the renewal of the license for the ensuing licensing year.

Section 4. Inactive Licenses (1) Fees.
(a) The inactive license fee for a speech-language pathologist for a licensing year shall be twenty (20) dollars.
(b) The inactive license fee for an audiologist for a licensing year shall be twenty (20) dollars.
(c) The combined inactive license fee for a speech-language pathologist and audiologist for a licensing year shall be twenty (20) dollars.
(d) The inactive license fee for a speech-language pathology assistant shall be twenty (20) dollars.
(2) Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:
(a) Filing a completed Annual Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate;
(b) Payment of the current renewal fee as set forth in Section 1 of this administrative regulation; and
(c) Compliance with the continuing education requirements established in 201 KAR 17:003, Sections 10 and 11.
(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee for the licensing year.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Annual Renewal Application", January 2000; and
(b) "Renewal Application for Speech-Language Pathology Assistants", January 2000.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 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 Speech-Language Pathology and Audiology 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 found with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309
PAMELA ADAMS JISON, Chair
APPROVED BY AGENCY: October 15, 2008
FILLED WITH LGRC: October 15, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2008, at 3 p.m., local time, at the Kentucky Board of Speech Language Pathology and Audiology, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the 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 December 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: Gerald W. Hoppmann, Director, Kentucky Board of Speech Language Pathology and Audiology, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3286 ext. 224, fax (502) 696-1899.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Gerald W. Hoppmann
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides a mechanism to divide the total number of license renewals over a two-year period.
(b) The necessity of this administrative regulation: The necessity of this regulation is to create a more efficient manner by which licenses are renewed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees. The board is given the authority to promulgate regulations per KRS 13A.100 and 334A.010.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation allows the Board to efficiently process biennial renewals.
(2) If 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 amended administrative regulation provides a mechanism to divide the total number of license renewals over a two-year period.
(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to create more efficiency in processing renewal application on a biennial basis.
(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 a mechanism to administer biennial renewal applications, which is required in the
statute.
(c) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will decrease the workload by dividing the total number of license renewals over a two-year period.
(d) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 applicants for speech-language pathologist; 36 for speech-language pathology assistant; and 25 for audiologist annually; and approximately 2,500 license holders (of all types) in the Commonwealth of Kentucky.
(e) 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:
(f) List the terms that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to comply with KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17.012.
(g) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Each licensed speech-language pathologist, speech-language pathology assistant, and audiologist shall pay a renewal fee of $100 annually.
(h) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice.
(i) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: 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.
(j) 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.
(k) Provide an assessment of whether an 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 amended administrative regulation.
(l) Provide an assessment of whether fees or indirect costs will be necessary to implement this administrative regulation:
(a) Initially: No additional fees or indirect costs are expected.
(b) On a continuing basis: No additional fees or indirect costs are expected.
(m) 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
(n) When units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation:
(a) This administrative regulation directly impacts those individuals who voluntarily apply for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, and thus are governed by the Kentucky Board of Speech Language Pathology and Audiology.
(b) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation:
KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17.012.
(c) 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? Currently, there are approximately 300 applicants for speech-language pathologist; 36 for speech-language pathology assistant; and 25 for audiologist annually; and approximately 2,500 license holders (of all types) in the Commonwealth of Kentucky. This regulation will not generate additional revenue during the application renewal period, unless licensees are assessed delinquency fees, which would generate an additional $25 per licensee. Licensees meeting these criteria are estimated at approximately 50 per year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.
(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) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice.
(e) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: 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.
(f) 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.
(g) Provide an assessment of whether an 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 amended administrative regulation.
(h) Provide an assessment of whether fees or indirect costs will be necessary to implement this administrative regulation:
(a) Initially: No additional fees or indirect costs are expected.
(b) On a continuing basis: No additional fees or indirect costs are expected.
(i) 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
(j) When units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation:
(a) This administrative regulation directly impacts those individuals who voluntarily apply for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, and thus are governed by the Kentucky Board of Speech Language Pathology and Audiology.
(k) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation:
KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17.012.
(l) 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? Currently, there are approximately 300 applicants for speech-language pathologist; 36 for speech-language pathology assistant; and 25 for audiologist annually; and approximately 2,500 license holders (of all types) in the Commonwealth of Kentucky. This regulation will not generate additional revenue during the application renewal process, unless licensees are assessed delinquency fees, which would generate an additional $25 per licensee. Licensees meeting these criteria are estimated at approximately 50 per year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.
(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) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice.
(e) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: 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.
(f) 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.
(g) Provide an assessment of whether an 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 amended administrative regulation.
(h) Do state or federal regulatory agencies require or authorize the action taken by this administrative regulation:
(a) Yes
(b) No
(c) If yes, which regulatory agencies require or authorize the action:
KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17.012.
(d) 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:
2. Contracts for; or
3. Regulate; and
(b) For which it requires the services of a:
1. Certified general real property appraiser;
2. Certified residential real property appraiser or
3. Licensed real property appraiser.
(9) "Licensed real property appraiser" means an individual who has fulfilled the requirements for licensure established by the board to appraise real property in connection with non-federally-related transactions.
(9) "Licensed real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property in connection with federally and non-federally related transactions.
(10) "Real estate-related financial transaction" means a transaction that involves the:
(a) Sale, lease, purchase, investment in, or exchanges of real property, including an interest in property, or the financing thereof;
(b) Refinancing of real property, or an interest in real property; and
(c) Use of real property, or an interest in property, as security for a loan or investment, including a mortgage-backed security.
(11) "Residential" means one (1) to four (4) residential units.

J.W. GRAEBEL, Chair
APPROVED BY AGENCY: October 5, 2008
FILED WITH LRC: October 15, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 1 p.m., at 2624 Research Park Drive, Suite 204 Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 1, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person James J. Graebe
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation defines terms used in 201 KAR Chapter 30.
(b) The necessity of this administrative regulation. The regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the meaning of terms not defined in KRS Chapter 324A.
(c) How this administrative regulation conforms to the content of the authorizing statutes. The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation will assist the board in administering this program by identifying the meaning of terms not defined in KRS Chapter 324A.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment changes the definition of a certified real property appraiser.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the meaning of terms not defined in KRS Chapter 324A.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.
(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the meaning of terms not defined in KRS Chapter 324A.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately eight hundred persons currently certified as residential real property appraisers.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified residential real property appraisers will be prohibited from performing appraisals on nonresidential properties.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.
(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 changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was applied as provided by KRS Chapter 324A which authorizes the board to create different classifications of certificate holders.

FEDERAL MANDATE ANALYSIS COMPARISON
(1) Federal statute or regulation constituting the federal mandate: 12 U.S.C. 3345
(2) State compliance standards. This administrative regulation defines terms used in 201 KAR Chapter 30 as they relate to federally related transactions, the scope of practice, and general requirements for certification or licensure.
(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.
(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

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 Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

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

AGRICULTURE
Livestock Sanitation
(Amendment)


RELATES TO: KRS 257.070, 9 C.F.R. 92.301
STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky comply with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes a technique for the treatment of a mare imported into Kentucky from a country listed in 9 C.F.R. 92.301 as a country affected by contagious equine metritis (CEM).

Section 1. Definitions. (1) "Application to import" means a request to import a horse or horses to a single specific farm or quarantine facility. If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.

(2) "Breeding" or "bred" means the natural covering of a mare.

(3)(i) "CEM" means contagious equine metritis.

(3)(ii) "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

(3)(iv) "Cleansing of a stallion" means thorough washing, using warm water, of the external genitalia of the stallion with the penis in full erection.

(4) "Mare" means a female horse over 731 days of age.

(4) "Set of swabs" means a swab obtained from the clitoral sinus and clitoral fossa.

Section 2. A mare imported into Kentucky, for breeding, from a country known to be affected by CEM shall be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following procedure:

(1) Following arrival into Kentucky, the veterinarian shall obtain a set of swabs from the mare on days one (1), four (4), and seven (7).

(2) On completing the set of swabs on day seven (7), the accredited veterinarian shall manually remove all organic debris from the clitoral fossa and sinuses. The sinuses shall then be flushed with an approved ceruminolytic agent until all remaining debris has been removed. The accredited veterinarian shall, for five (5) consecutive days, wash and clean (scrub), with a solution of not less than two (2) percent chlorhexidine in a detergent base, the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses. The clitoral fossa, clitoral sinuses, external genitalia, and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Department for Agriculture.

(3) After the procedures established in subsections (1) and (2) of this section have been satisfactorily completed and all three (3) of the swabs are reported to the department as testing negative for CEM bacterium, the imported mare may be released from quarantine.

(4) Before the imported mare may be bred in Kentucky, a swab shall be collected from the endometrium and cultured negative for CEM. This swab may be included with any of the three (3) required sets of swabs, or for a pregnant mare, may be collected after foaling.

(5) An imported mare bred in Kentucky shall be prophylactically scrubbed and bred last of the group of mares bred during that session. The external genitalia of the covering stallion shall be cleansed, as defined in Section 1 of this administrative regulation, after breeding an imported mare. The next three (3) mares bred to the same stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(6) It shall be the responsibility of the farm where the stallion is standing to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(7) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare.

Section 3. The imported mare may be released from quarantine when:

(1) The requirements of Sections 1 and 2 of this administrative regulation have been completed; and

(2) The required specimens taken from the mare test negative for the CEM bacterium.

Section 4. A CEM culture positive mare shall remain under quarantine and shall be treated as described in Section 2(2) and (5) of this administrative regulation. The mare shall have sets of swabs obtained, as described in Section 2(1) of this administrative regulation, no less than twenty-one (21) days after the last day of treatment. If all required specimens taken from the mare test negative for the CEM bacterium, the mare may be released from quarantine.

Section 5. User fee/A-year fee shall be assessed for an equine import. (1) An import broker making application to import mares into Kentucky for completion of a CEM quarantine shall be assessed and pay a fee for the processing, implementation, and monitoring of the quarantine.

(2) An application processing and premise inspection fee of $100 will be assessed for each application received to import mares into Kentucky for completion of the CEM quarantine.

(3) Upon receipt of the mare(s) at the quarantine facility the broker will be assessed a fee of $120 per individual mare for the receipt, inspection, quarantine, and monitoring to establish the animal's disease status during the quarantine period.

(4) An import broker shall pay a fee for each shipment of mares which arrives at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

a.m., the assessed fee shall be sixty (60) forty-(40) dollars per hour with a minimum of two (2) hours to be charged. (b) For state-recognized holidays, the assessed fee shall be $120(eighty-$80) dollars per hour with a minimum of two (2) hours charged. The holiday fee shall apply to all horses received during the holiday period and run from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday. (2) The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Office of State Veterinarians-the assessed fee within ninety-six (96) hours of receipt of the charges. (3) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: October 2, 2008
FILED WITH LRC: October 6, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2008, at 10 a.m., at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing was received by that date, the hearing may be cancelled. This 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 December 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: Dr. Robert Stout or Dr. Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, phone (502)564-3956, fax (502) 564-7652.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides the regulatory authority required by the USDA that allows importation of horses into Kentucky from CEM countries.
(b) The necessity of this administrative regulation: Required by the USDA for a state to be approved to import these horses.
(c) How this proposed regulation conforms to the content of the authorizing statutes: N/A.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prevent the introduction of a foreign animal disease.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Amends the current fee structure to more fairly represent the value of the service being provided in the importation, quarantine and testing for disease of equine animals imported from countries declared by the USDA as affected with the foreign animal disease Contagious Equine Metritis (CEM).
(b) The necessity of the amendment to this administrative regulation: These amendments provide the means and fiscal resources necessary to fulfill the regulatory implementation and oversight required by the USDA for Kentucky to maintain the approved status for importing equine from the countries identified by the USDA as affected with CEM.
(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: Provide resources to insure personnel are available for the program to be implemented as directed by the USDA.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrat-

tive regulation. Equine farms importing horses from countries considered by the USDA as affected with CEM and the Transportation Broker acting as agent for the owner of the horse being imported.
(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 average cost (Pre export Testing, Air Transportation, USDA Fees, Ground Transportation, Post Importation Quarantine) is suggested to be $8,000. Brokers making application to import equine for CEM Quarantine/Testing to the Kentucky Department of Agriculture will be billed for the services provided by the Kentucky Department of Agriculture. The maximum application fee that will be billed by the Department to the Broker will be $220 for a mare or $360 for a stallion which equates to a cost increase of 2.7 to 4.3%.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The attached more clearly defines the associated fee and its' relevance to Brokers importing horses into Kentucky during calendar yr 2007.
(c) A result of compliance: What benefits will accrue to the entities identified in question (3): The program will be enhanced with greater oversight which better provides the opportunity of diagnosing animals being imported prior to their having an ability to transmit the disease causing agent.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Minimal additional cost.
(b) On a continuing basis: Minimal additional cost.
(6) What is the source of the funding to be used for the implementation and enforcement of the administrative regulation: Generated from the fee structure.
(7) Provide an assessment of whether an 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 fees currently charged for work required at night and on weekends is being increased to help defray the overtime-compensatory time accumulated. Additionally, an application fee is being incorporated to better reflect the cost associated with the services being provided by the Kentucky Department of Agriculture with the implementation and maintenance of this program allowing for horses to be imported.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes.

TIERING: Is tiering applied? Yes. A flat fee for each application is charged regardless of the number of horses being imported. This fee will be utilized to help cover the initial expense of processing the application, traveling to and conducting the pre import inspection of the premises and issuance of the required approval to the USDA for the importation to proceed. Secondly, a fee will be charged for each individual horse being imported. This fee is to help offset the Department's cost associated with traveling to the quarantine site and receiving the animal at the time of arrival, conducting the required inspections, identification and quarantining of each animal. During the course of the quarantine the overseeing regulatory official monitors the quarantine and associated testing before releasing the animal.

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 Agriculture, Office of State Veterinarian
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 9 C.F.R. 93.301
4. Estimate the effect of this administrative regulation on the
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

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? Approximately $70,000

(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? Approximately $70,000

(c) How much will it cost to administer this program for the first year? Approximately $120,000

(d) How much will it cost to administer this program for subsequent years? Approximately $120,000

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, 9 C.F.R. 83.301
2. State compliance standards. Quarantine horses on arrival – conduct required testing and examinations.
3. Minimum or uniform standards contained in the federal mandate. Minimal facility, veterinary and management requirements are stated in USDA directives and prescribed by KDA.
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. N/A

AGRICULTURE

LIVESTOCK SANITATION

(Amendment)

302 KAR 20:120. Treatment of imported stallions.

RELATES TO: KRS 257.070

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that the importing of an animal into Kentucky comply with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantine and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes techniques for the treatment of stallions imported into Kentucky from a country outside the continental United States, its territories and possessions, or Canada.

Section 1. Definitions. (1) "Application to Import" means a request to import a horse or horses to a single specific farm or quarantine facility. If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.

(2) "Bredling" or "bred" means the natural covering of a mare.

(3) "CEM" means contagious equine metritis.

(4) "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

(5) "Set of swabs": for male equines, means a swab obtained from the clitoral sinus and clitoral fossa.

(6) "Set of swabs": for an intact male equine, means a swab obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis.

(7) "Stallion" means a male horse, other than a gelding, over 731 days of age.

Section 2. Stallions over 731 days of age at the time of importation from outside the continental United States, its territories, possessions, or Canada shall, before breeding, be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following:

(1) While wearing disposable gloves and using disposable equipment, the veterinarian shall collect one (1) set of swabs from the stallion to be cultured for CEM.

(2) The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free if:

(a) They test negative to a CF test; and
(b) A set of swabs taken from the mares on days one (1), four (4), and seven (7) are culture negative for the CEM bacterium.

(3) After being bred by the stallion, a set of swabs shall be collected from the test mares on the third, sixth, and ninth days after breeding

(4) The test mares shall have a CF test conducted fifteen (15) days after breeding.

(5) With the stallion in full erection, the veterinarian shall, for five (5) consecutive days, wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine (cheese soap) in a detergent base, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, shall then be filled and covered with an appropriate ointment effective against the CEM organism and which is approved by the USDA and the Kentucky State Veterinarian. A list of approved laboratories may be found at http://www.aphis.usda.gov/vs/nvs/LabCertification/CEMlabs2001.htm. All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA’s National Veterinary Services Laboratory and the Kentucky State Veterinarian. If all required specimens taken from the test mares and stallion are test negative and culture negative for the CEM bacterium, the stallion and the test mares may be released from quarantine.

Section 3. Fee. [A user fee] shall be assessed for an equine import.

1. An import broker making application to import a stallion into Kentucky for completion of a CEM quarantine shall be assessed and pay a fee for the processing, implementation, and monitoring of the quarantine.

2. An application processing and premise inspection fee of $100 will be assessed for each application received to import horses into Kentucky for completion of the prescribed CEM quarantine and testing.

3. Upon receipt of the stallion at the quarantine facility, the broker is required to be assessed a fee of $250 per individual stallion for the receipt, inspection, quarantine, test breeding, and monitoring of the stallion and test mares to establish the animal’s disease status during the quarantine period.

4. An import broker shall pay a fee for each shipment of equine (stallions and mares) which arrives at a Kentucky quarantine designation on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be sixty (60) forty-(40) dollars per hour with a minimum of two (2) hours time charged.

(b) For state-recognized holidays, the assessed fee shall be $120 (eighty-six dollars) per hour with a minimum of two (2) hour time charged. The holiday fee shall apply to all stallions received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday.

2. The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Office of State Veterinarian, the assessed fee within ninety-six (96) hours of receipt of the charges.

3. Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

RICHIE FARMER, Commissioner

- 1249 -
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

APPROVED BY AGENCY: October 2, 2008
FILED WITH LRC: October 8, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2008, at 10 a.m., at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, 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. The 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 December 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: Dr. Robert Stout or Dr. Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, phone (502) 564-8926, fax (502) 564-7652.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides the regulatory authority required by the USDA that allows importation of horses into Kentucky from CEM countries.
(b) The necessity of this administrative regulation: Required by the USDA for a state to be approved to import these horses.
(c) How this administrative regulation conforms to the content of the authorizing statutes: N/A.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prevent the introduction of a foreign animal disease.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Amends the current fee structure to more fairly represent the value of the service being provided in the importation, quarantine and testing for disease of equine animals imported from countries declared by the USDA as affected with the foreign animal disease Contagious Equine Metritis (CEM).
(b) The necessity of the amendment to this administrative regulation: These amendments provide the means and fiscal resources necessary to fulfill the regulatory implementation and oversight required by the USDA for Kentucky to maintain the approved status for importing equine from the countries identified by the USDA as affected with CEM.
(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: Provide resources to insure personnel are available for the program to be implemented as directed by the USDA.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Equine farms importing horses from countries considered by the USDA as affected with CEM and the Transportation Broker acting as agent for the owner of the horse being imported.
(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 average cost (Pre export Testing, Air Transportation, USDA Fees, Ground Transportation, Post Importation Quarantine) is suggested to be $8,000. Brokers making application to import equine for CEM Quarantine/Testing to the Kentucky Department of Agriculture will be billed for the services provided by the Kentucky Department of Agriculture. The maximum application fee that will be billed by the Department to the Broker will be $220 for a mare or $360 for a stallion which equates to a cost increase of 2.7 to 4.3%.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The attached more clearly defines the associated fee and its' relevance to Brokers importing horses into Kentucky during calendar year 2007.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The program will be enhanced with greater oversight which better provides the opportunity of diseased animals being detected prior to their having an ability to transmit the disease causing agent.
(5) Provide an estimate of how much it will cost the administrative agency to implement this administrative regulation:
(a) Initially: Minimal additional cost
(b) On a continuing basis: Minimal additional cost
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Generated from the fee structure.
(7) Provide an assessment of whether an 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 fees currently charged for work required at nights and on weekends is being increased to help defray the overtime-compensatory time accumulated. Additionally, an application fee is being incorporated to better reflect the cost associated with the services being provided by the Kentucky Department of Agriculture with the implementation and maintenance of this program allowing for horses to be imported.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes
(9) TIERING: Is being applied? Yes. A flat fee for each application is charged regardless of the number of horses being imported. This fee will be utilized to help cover the initial expenses of providing the application, traveling to and conducting the pre import inspection of the premises and issuance of the required approval to the USDA for the importation to proceed. Secondly, a fee will be charged for each individual animal being imported. This fee is to help offset the Department's cost associated with traveling to the quarantine site and receiving the animal at the time of arrival, conducting the required inspections, identification and quarantining of each animal. During the course of the quarantine the overseeing regulatory official monitors the quarantine and associated testing before releasing the animal.

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 Agriculture, Office of State Veterinarian
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 9 C.F.R. 30.301
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? Approximatley 70,000
(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? Approximately 7,000
(c) How much will it cost to administer this program for the first year? Approximately 120,000
(d) How much will it cost to administer this program for subsequent years? Approximately 120,000
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

- 1250 -
regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 9 C.F.R. 93.301
2. State compliance standards. Quarantine horses on arrival – conduct required testing and examinations.
3. Minimum or uniform standards contained in the federal mandate. Minimal facility, veterinary and management requirements are stated in USDA directives and prescribed by KDA.
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. N/A

DEPARTMENT OF AGRICULTURE
(Amendment)

302 KAR 79:010. Testing and inspection program.

RELATES TO: KRS 363.900-363.908
STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306.12, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions. (1) "Distributor" means any person who transports, stores, or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer’s facility and any retail outlet or wholesale purchaser-consumer facility.
(2) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline with a substantial amount of one (1) or more oxygenates added.
(3) "Octane rating" means the rating of the antiknock characteristic of a grade or type of gasoline which is determined by taking the average of the sum of the research octane number and the motor octane number.

Section 2. Administration. The Division of Regulation and Inspection, Kentucky Department of Agriculture shall administer the Motor Fuels Inspection and Testing Program pursuant to KRS 363.900-908.

Section 3. Standard Specifications. (1) Gasoline offered for sale at a retail facility shall conform to ASTM D-4814 specifications, with the following exceptions:
(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius). For gasoline containing up to ten (10) percent ethanol, the vapor pressure limit for each class shall be increased by one (1) pound per square inch and the ASTM V.R. (vapor to liquid ratio) specification is waived as required by KRS 363.904(1)(b),(c).
(b) For the periods from May 1 through September 15, the concentration of ethanol shall be at least nine (9) percent and no more than ten (10) percent by volume of the gasoline to qualify for the increased vapor pressure allowance.
(2) The test methods used to determine the standards of fuel quality shall conform to ASTM D-4814.
(3) Samples of motor fuels obtained for testing shall be obtained in a manner consistent with ASTM D-4814.
(4) Gasoline shall not be offered for retail sale under the name "premium" or "super" gasoline unless the antiknock octave index is greater than or equal to ninety-one (91) antiknock octave index.
(5) Gasoline shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless the antiknock octave index is greater than or equal to eighty-nine (89) and less than or equal to ninety (90) antiknock octave index.
(6) Gasoline shall not be offered for retail sale under the name "regular" gasoline unless the antiknock octave index is greater than or equal to eight-six (86) and less than or equal to eighty-eight (88) antiknock octave index.

Section 4. General Considerations. (1) Gasoline, diesel fuel, and gasoline-oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:
(a) The name of the person transferring the motor fuel;
(b) The name of the person to whom the motor fuel is being transferred;
(c) The date of the transfer;
(d) The octave rating, if the motor fuel is gasoline or a gasoline oxygenate blend;
(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.
(2) Each retail facility selling motor fuel shall retain the bills of lading or invoices at the location to which the motor fuel is transferred for a period of not less than thirty (30) days. If a person sells motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, if the bills of lading or invoices are made available to the department upon request.
(3) Retail dispensing devices.
(a) All retail dispensing devices shall post the octave rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octave rating. If two (2) or more gasolines with different octave ratings are sold from a single dispenser, separate labels for each octave rating shall be placed on the face of the dispenser.
(b) The label, or labels, shall be placed conspicuously on the dispenser and be in full view of consumers. The label, or labels, shall be placed as near as reasonably practicable to the price of the gasoline.
(c) The label showing the minimum octave rating shall meet the same specifications as required under 16 C.F.R. Part 306.12.

Section 5. Diesel Fuel. (1) Diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to ASTM D-975.
(2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel." The labeling shall be placed conspicuously on the dispenser and be in full view of consumers.

Section 6. Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1657.

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.
(2) The department shall have access to all motor fuels for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of competent jurisdiction.
(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department inspector shall present proper identification to the employees in charge prior to obtaining samples.
(4) The department may issue a stop-sale order for any motor fuel not in compliance with provisions of this administrative regulation. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation of the violation. A stop-sale order shall be rescinded by the department upon resolution of the violation. The stop-sale order shall apply
only to the location where sample analysis indicates an ASTM specification violation.

Section 8. Violation Process. (1) If the department determines a violation of KRS 363.900-906 has occurred, the offending party shall be immediately notified in writing of the violation. A notice of violation which contains a brief description of the specific violation shall be issued.

(2) A stop-sale order may be included with the notice of violation.

(3) If a stop-sale order is issued, the product shall be removed from sale to the public until the product is brought into compliance with KRS 363.900-906.

(A) A certification that the product meets the requirements of KRS 363.900-906 shall be furnished to the department before sale shall be resumed. Additional samples of the product may be required.

(B) The retail facility, within ten (10) days of receipt of notice of violation, shall provide detailed documentation to the department describing the corrective action to bring the product into compliance with KRS 363.900-906.

(5) In issuing an order under KRS 363.900 to 363.908, the department shall use the "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995" and may also consider the degree and extent of harm caused by the violation, the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation, whether the violation was committed willfully, and the compliance record of the violator when determining the civil penalty to be assessed.

(7) For a first violation, the civil penalty shall not exceed $1,000 nor be less than twenty-five (25) dollars. For a second or subsequent violations, the civil penalty shall not exceed $5,000 nor be less than fifty (50) dollars.

(8) The civil penalty shall be due within thirty (30) days of receipt of notification of violation unless a hearing is requested in accordance with subsection (10) of this section.

(9) Failure to pay a civil penalty within thirty (30) days after receipt of the violation may result in a stop-sale order being issued by the department.

(10) Upon receipt of notice of violation, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's findings and order. The hearing shall be conducted in accordance with KRS Chapter 13B.

(11) Appeals may be taken from final orders within thirty (30) days to the Franklin Circuit Court.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASTM D-4614-01a, Standard Specifications for Automotive Spark Ignition Engine Fuel, November 2001 edition";

(b) "ASTM D 975-02, Standard Specification for Diesel Fuel Oils, January 2002 edition";

(c) "American Petroleum Institute color codes as specified and published in API Recommended Practice 1587, September 1995 edition";

(d) "16 C.F.R. 306.12 (revised as of January 1, 2002)"; and

(e) "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHE FARMER, Commissioner
APPROVED BY AGENCY: October 6, 2008
FILED WITH LRC: October 10, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2008 at 9 a.m., at 32 Fountain Place, 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 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 December 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: Mark Farrow, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-6099, fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Farrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: Changes octane requirements for regular and mid-grade ethanol blended gasoline.

(b) The necessity of this administrative regulation: Ethanol blending causes octane value to exceed the maximum allowable values.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 363 requires the commissioner to implement an inspection and testing program for motor fuels.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will bring retail sellers of ethanol blended gasoline into compliance.

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

(a) How the amendment will change this existing administrative regulation: Changes definition of regular and mid-grade gasoline.

(b) The necessity of the amendment to this administrative regulation: To bring regulated entities into compliance with state law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 363 requires the commissioner to implement an inspection and testing program for motor fuels.

(d) How the amendment will assist in the effective administration of the statutes: Will allow regulated entities to be in compliance with state law.

(3) List the type and number of individual's, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,300 retail fuel establishments in Kentucky. Those that sell ethanol blended gasoline will be affected.

(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: No action will be required by the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) -

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities selling ethanol blended gasoline will be in compliance with state law.

(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: -

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased.
ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)


RELATES TO: KRS 224.10-100, EO 2008-507, 2008-531, 40 C.F.R., Part 60, Chapter 224
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100
authorized requires the [Environmental and Public Protection] cabinet to promulgate [preclude] administrative regulations for the prevention, abatement, and control of air pollution. 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 provides for the control of emissions from new indirect heat exchangers.

Section 1. Definitions. (1) "Indirect heat exchanger" or "IHE" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to the point of usage through a fluid medium that does not come in contact with or add to the products of combustion.
(2) "CEMS" means continuous emissions monitoring system.
(3) "Classification date" means:
(a) August 17, 1971, for indirect heat exchangers with a capacity greater than 250 million BTU per hour heat input for particulate emissions and sulfur dioxide emissions; or
(b) April 9, 1972, for indirect heat exchangers with a capacity of 250 million BTU per hour heat input or less for particulate emissions and sulfur dioxide emissions.
(4) "COMS" means continuous monitoring system for opacity.
(5) "PM CEMS" means a particulate matter continuous emissions monitoring system.

Section 2. Applicability. (1) This administrative regulation shall apply to indirect heat exchangers having a heat input capacity greater than one (1) million BTU per hour commenced on or after the applicable classification date.
(2) Except as provided in Section 3(9)(a), units subject to 40 C.F.R., 60.40 to 60.46 (Subpart D); 60.40D to 60.52D (Subpart Da); 60.40B to 60.49B (Subpart Db); or 60.40e to 60.48e (Subpart De) shall be exempt from this administrative regulation.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all IHEs located at a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet:
(2) The permitted allowable emissions rate of an indirect heat exchanger shall not be changed due to inclusion or shutdown of another heat exchanger at the source.
(3) Sources may petition the cabinet to approve an allowable emission rate apportioned independently from heat input if the conditions specified in this subsection are met.
(a) The allowable emission rate shall be determined according to the following equation: \[ E = \frac{A}{B + C} \] in which:
\[ A = \text{allowable emission rate} \]
\[ B = \text{total rated heat input (in millions of BTU per hour) of all indirect heat exchangers at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;} \]
\[ C = \text{total rated heat input (in millions of BTU per hour) of all indirect heat exchangers at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;} \]
\[ D = \text{allowable emission rate (in lbs per million BTU input) as determined pursuant to 401 KAR 61:015, Section 3(1);} \]
\[ F = \text{total rated heat input in millions of BTU per hour of all indirect heat exchangers at the source commenced before the applicable classification date; and} \]
\[ G = \text{alternate allowable emission rate in lbs per actual million BTU input} \]
(b) The total emissions (in lbs per hour) from all indirect heat exchangers at the source subject to this administrative regulation divided by the total actual heat input (in millions of BTU per hour) of the indirect heat exchangers shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection.
(c) A source subject to a federal new source performance standard (NSPS) of 40 C.F.R. Part 60 shall not allow the emissions from an indirect heat exchanger commenced on or after the applicable classification date to exceed the allowable emission rate determined by the IHE's rated heat input as specified in Sections 4 and 5 of this administrative regulation.
(d) The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50.045 for each indirect heat exchanger subject to this administrative regulation.
(e) The source shall demonstrate that compliance shall be maintained with this subsection on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided in Section 3(9) of this administrative regulation, an indirect heat exchanger subject to this administrative regulation shall not cause emissions of particulate matter in excess of:
(1) 0.56 lbs per million BTU actual heat input for IHEs with total heat input capacity of ten (10) million BTU per hour or less;
(2) 0.10 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more; and
(c) 0.634 multiplied by the quantity obtained by raising the total heat input capacity (in millions BTU per hour) to the 0.25356 power for IHEs with heat input values greater than ten (10) million BTU per hour and less than 250 million BTU per hour.
(2) Twenty (20) percent capacity except:
(a) For indirect heat exchangers with heat input capacity of 250 million BTU per hour or more, a maximum of twenty-seven (27) percent capacity shall be allowed for one (1) six (6) minute period in any sixty (60) consecutive minutes.
(b) For indirect heat exchangers with heat input capacity of less than 250 million BTU per hour, a maximum of forty (40) percent capacity shall be allowed for a maximum of six (6) consecutive minutes in any sixty (60) consecutive minutes during fire box cleaning or spot blowing.
(c) For emissions from an indirect heat exchanger caused by building a new fire, emissions during the period required to bring the boiler up to operating conditions shall be allowed, if the method used is recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided in Section 3(9) of this administrative regulation, indirect heat exchangers subject to this administrative regulation shall not cause emissions of gases that contain sulfur dioxide in excess of:
(a) 10% for IHEs with total heat input capacity of ten (10) million BTU per hour or less;
(1) Three and zero-tenths (3.0) lbs per million BTU actual heat input for combustion of liquid and gaseous fuels;
(2) Two and zero-tenths (2.0) lbs per million BTU actual heat input for combustion of solid fuels.
(b) 1.0 for IHEs with total heat input capacity of 250 million BTU per hour or more;
(c) 0.6 lbs per million BTU actual heat input for combustion of liquid and gaseous fuels; and
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

2. One and two-tenths (1 2) lbs per million BTU actual heat input for combustion of solid fuels; and
(c) For IHEs with heat input values between those specified in paragraphs (a) and (b) of this subsection, the standard, in the per million BTU actual heat input, shall be equal to:
(1) For combustion of liquid and gaseous fuels, the value 7,7223 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4106 power; and
(2) For combustion of solid fuels, the value 13 8781 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4434 power.
(2) Compliance shall be based on the total heat input from all fuels burned.
(3) For simultaneously burning different fuels in combination, the applicable standard shall be determined by prorating BTUs pursuant to the following equation: Allowable sulfur dioxide emission in lbs per million BTU per hour heat input = [(a) + (b) + (c)]/(x + y + z + w), in which:
(a) x = percent total heat input derived from liquid or gaseous fuel;
(b) y = percent total heat input derived from solid fuel;
(c) a = allowable sulfur dioxide emission in lbs per million BTU heat input derived from liquid or gaseous fuel; and
(d) b = allowable sulfur dioxide emission in lbs per million BTU heat input derived from solid fuel.
Section 6. Standard for Nitrogen Oxides (1) An indirect heat exchanger with heat input capacity of 250 million BTU per hour or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:
(a) 0.20 lbs per million BTU heat input (0.36 g per million cal) derived from gaseous fuel;
(b) 0.50 lbs per million BTU heat input (0.54 g per million cal) derived from liquid fuel;
(c) 0.70 lbs per million BTU heat input (1.20 g per million cal) derived from solid fuel except lignite;
(d) 0.60 lbs per million BTU heat input (1.68 g per million cal) derived from lignite or lignite wood residue except as provided in paragraph (a) of this subsection; and
(e) 0.60 lbs per million BTU derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired IHE.
(2) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be prorated using the equation: Allowable nitrogen dioxide emission in lbs per million BTU heat input = f(x)(y) + g(x) + h(y) + i(y) + j(x) + k(y), in which:
(a) x = percent total heat input derived from gaseous fuel;
b + (b) y = percent total heat input derived from liquid fuel;
c = percent total heat input derived from solid fuel (except lignite);
(c) w = percent total heat input derived from lignite;
(3) For fossil fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or other solid fossil fuel; wood residue; or biomass, the standard for nitrogen oxides shall not apply.
(4) Cyclone-fired IHEs burning fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or other solid fossil fuel; wood residue; or biomass, the standard for nitrogen oxides shall not apply.
Section 7. Emission and Fuel Monitoring. This section shall apply to sources operating indirect heat exchangers with rated heat input capacity greater than 250 million BTU per hour.
(1) Except as provided in subsection (2) of this section, sources shall install, calibrate, maintain, and operate a continuous monitoring system for measuring:
(a)Opacity of emissions;
(b) Sulfur dioxide emissions;
(c) Nitrogen oxides emissions; and
(d) Oxygen or carbon dioxide emissions in the flue gases.
(2) Subsection (1) of this section shall not apply as follows:
(a) For IHEs burning only gaseous fuel, a continuous monitoring system for opacity (COMS) shall not be required;
(b) For IHEs burning only natural gas, wood, wood residue, or biomass; or a combination of natural gas, wood, wood residue or biomass; a continuous emissions monitoring system (CEMS) for sulfur dioxide emissions shall not be required;
(c) For nitrogen oxides, installation of CEMS may be deferred until after the initial performance tests required by 401 KAR 59 005, Sections 2 and 4(2)(c) and
2. If the initial performance test results show nitrogen oxide emissions:
(a) are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or
(b) are greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests;
(c) For a source exempt from installing CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required;
(d) For IHEs not using fuel gas desulfurization devices, CEMS for sulfur dioxide emissions shall not be required if the source monitors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (3) of this section.
(3) For performance evaluations subjects subject to 401 KAR 59 005, Sections 4(3), and calibration checks subject to 401 KAR 59 005, Sections 4(4), the following procedures shall be used:
(a) Reference Methods 6-82 or 7-7E, incorporated by reference in 401 KAR 59 015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;
(b) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures pursuant to 40 C.F.R., Part 60, Appendix B, Performance Specification 2;
(c) The span value for a continuous monitoring system:
1. For IHEs burning fossil fuels, shall be sixty (60), ninety (90), or one hundred (100) percent;
2. For systems measuring sulfur oxides or nitrogen oxides, shall be determined pursuant to the following table:

<table>
<thead>
<tr>
<th>Fossil Fuel</th>
<th>Span Value for Sulfur Dioxide</th>
<th>Span Value for Nitrogen Oxides</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas</td>
<td>500</td>
<td>500</td>
</tr>
<tr>
<td>Liquid</td>
<td>1,000</td>
<td>500</td>
</tr>
<tr>
<td>Solid</td>
<td>1,500</td>
<td>500</td>
</tr>
</tbody>
</table>

Combination: 1,000x + 1,500z

3. For the table in subparagraph 2 of this paragraph:

(a) x shall indicate that a value shall not be applicable;
b = x = fraction of total heat input derived from gaseous fossil fuel;
c = y = fraction of total heat input derived from liquid fossil fuel;
d = z = fraction of total heat input derived from solid fossil fuel;
(d) Specified values computed pursuant to paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 ppmv; and
(e) The source shall submit the proposed CEMS span values for all IHEs that simultaneously burn fossil fuel and nonfossil fuel for cabinet approval pursuant to 40 C.F.R., 60 13(3d) and this subsection.
(4) For continuous monitoring systems installed pursuant to subsection (1) of this section, the following procedures shall be used to convert the continuous monitoring data into units of the applicable requirement in nanograms/kilojoule (ng/kJ) or kilogram BTU:
(a) For continuous monitoring systems measuring oxygen, the pollutant concentration and oxygen concentration shall be measured on a consistent wet or dry basis as follows:
1. Procedures approved by the cabinet and the U.S. EPA pursuant to 40 C.F.R. Part 60, Appendix B, shall be used for wet
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

basis measurements; and

2. For dry-basis measurements, the following conversion procedure shall be used:

\[ F = \frac{20.9 CF}{C} \times \frac{\text{conditioned percent moisture}}{\text{obtained percent moisture}} \]

3. For continuous monitoring systems measuring carbon dioxide, the carbon dioxide concentration and carbon dioxide concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used:

\[ F = \frac{100 CF_L}{\text{percent carbon dioxide}} \]

In which E, C, and percent carbon dioxide shall be determined pursuant to subsection 5(b) of this section.

(b) The values used in the equations in subsection (a) and (b) of this section shall be derived as follows:

(a) E = pollutant emissions in g/million Btu (lb/million Btu);

(b) C = pollutant concentration in g/dscm (lb/dscm) determined by multiplying the average concentration by the following:

\[ \frac{(100 CF_L)}{(M \times 10000 \times \text{hour} \times \text{pt} \times \text{m})} \times \text{bhp} \times \text{torr} \]

In which M equals:

1. Pollutant molecular weight in g/mole (lb/mole): or
2. 6.47 for sulfur dioxide and 46.01 for nitrogen oxides;

(c) F, FC = factor representing a ratio of the volume of dry flue gases generated to the volume of carbon dioxide generated to the volume of the fuel combusted (C), respectively, pursuant to the applicable American Society for Testing and Materials (ASTM) standard from the Book of ASTM Standards Incorporated by reference in 40 CFR 50.015 as follows:

1. For anthracite coal as determined according to ASTM D388-66(76). F equals 16.10/bcf/million Btu and FC equals 12.00/bcf/million Btu;

2. For subbituminous and lignitic coals as determined according to ASTM D388-66(72). F equals 18.92/bcf/million Btu and FC equals 18.10/scf/million Btu;

3. For lignite coals containing crude oil, residual, and distillate oils, F equals 22.92/bcf/million Btu and FC equals 14.30/scf/million Btu;

4. For gas and gas fuel, F equals 27.40/bcf/million Btu;

5. For natural gas, propane and butane fuels, F equals 10.40/scf/million Btu for natural gas, 1200 scf/million Btu for propane, and 1250 scf/million Btu for butane;

6. For bark, F equals 9.57/scf/million Btu and FC equals 1927 scf/million Btu;

7. For wood residue other than bark, F equals 9.23/scf/million Btu and FC equals 1842 scf/million Btu;

8. For lignite coal as determined according to ASTM D388-66(72). F equals 9900 scf/million Btu and FC equals 1920 scf/million Btu;

9. The owner or operator may use the equation given in sub-

paragraph 1 of this paragraph to determine an F factor (scf/million Btu) on a dry basis or FC factor (scf/million Btu) on either wet or dry basis in lieu of the F or FC factors specified in paragraph (c) of this subsection:

1. The F or FC Factor shall be determined by the following:

\[ F = \frac{122.2 \times (C) + 55.5 \times (C) + 35.6 \times (C) + 8.7 \times (C)}{28.7 \times (C)} \]

2. F = 10% (C) / (C); GCV (metric units);

3. F = 12.0 x 10/ (C); GCV (metric units);

4. F = 0.57 (C) / (C); GCV (English units);

5. F = 0.14 (C) / (C); GCV (English units);

6. H, C, S, N, and O shall be contained by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel before using ASTM method D3170-73 or D3170-74, for fuels or that result from using ASTM methods D1137-93(75), D1945-64(73), or D1945-99(72) (gaseous fuels) as applicable:

7. GCV shall be the gross calorific value (cal/g, BTU/lb) of the fuel combusted determined by ASTM test methods D2015-66(72) for solid fuels and D1628-64(70) for gaseous fuels as applicable:

and

(e) For IHEs find combinations of fuels, the F or FC factors determined by subparagraphs (b) and (c) of this subsection shall be prorated in accordance with the applicable formula as follows:

\[ F = xF_1 + yF_2 + zF_3 \times \frac{2}{x+y+z} \]

where x, y, z = the fraction of total heat input derived from gaseous, liquid, and solid fuel, respectively; and

b. FC = FC for gaseous, liquid, and solid fuels separately pursuant to subsection 5(c) and (d) of this section:

2. \[ FC = \sum_{i=1}^{n} X_i FC_i \]

where

X = fraction of total heat input derived from each type fuel.

b. \[ FC = \text{applicable FC factor for each fuel type determined pursuant to subsection 5(c) and (d) of this section.} \]

(c) For reports required pursuant to 401 KAR 59 009, Section 3(3), periods of excess emissions required to be reported shall be as follows:

(a) Excess emissions shall be any six (6) minute period during which the average opacity of emissions exceeds twenty (20) percent opacity, except that one (1) six (6) minute average per hour of up to twenty-seven (27) percent opacity shall not be required to be reported;

(b) For sulfur dioxide, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) consecutive one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed an applicable standard in Section 5 of this administrative regulation; and

(c) For nitrogen oxides, excess emissions for IHEs using a continuous monitoring system for measuring nitrogen oxides shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) consecutive one (1) hour periods) exceed an applicable standard in Section 6 of this administrative regulation.

(7) The source may request, in writing to the cabinet, to install a Particulate Matter Continuous Emissions Monitoring System (PM CEMS) in lieu of the requirement of subsection (1)(a) of this section for a COMS as follows:

(a) Excess emissions for an IHE using PM CEMS shall be determined by a boiler to an average of all operating one (1) hour periods exceeding an applicable standard pursuant to 40 C.F.R. 60.46; and

(b) The source shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.480a and 60.490a.

Section 8. Test Methods and Procedures. (1) Except as provided in 401 KAR 50 049, the reference methods specified in 40 C.F.R. Part 60, Appendix A shall be used to determine compliance with Sections 4, 5, and 6 of this administrative regulation as follows:

(a) Reference Method 1 shall be used for the selection of sampling sites and sample traverses;

(b) Reference Method 2 shall be used for gas analysis in applying Reference Methods 5, 6, and 7;

(c) Reference Method 3 shall be used for concentration of particulate matter and the associated moisture content;

(d) Reference Method 4 shall be used for the determination of sulfur dioxide;

(e) Reference Method 7 shall be used for the concentration of nitrogen oxides;

(f) Reference Method 8 shall be used for visible emissions;

(g) Reference Method 9 shall be used for smoke opacity.

(h) Reference Method 10 shall be used for the determination of particulate matter and associated moisture content.

(i) Reference Method 11 shall be used for the determination of sulfur dioxide content.

(j) Reference Method 12 shall be used for the determination of nitrogen oxides content.

(k) Reference Method 13 shall be used for the determination of visibility.

(l) Reference Method 14 shall be used for the determination of particulate matter content.

(m) Reference Method 15 shall be used for the determination of sulfur dioxide content.

(n) Reference Method 16 shall be used for the determination of nitrogen oxides content.

(o) Reference Method 17 shall be used for the determination of visibility.

(p) Reference Method 18 shall be used for the determination of particulate matter content.

(q) Reference Method 19 shall be used for the determination of sulfur dioxide content.

(r) Reference Method 20 shall be used for the determination of nitrogen oxides content.

(s) Reference Method 21 shall be used for the determination of visibility.

(t) Reference Method 22 shall be used for the determination of particulate matter content.

(u) Reference Method 23 shall be used for the determination of sulfur dioxide content.

(v) Reference Method 24 shall be used for the determination of nitrogen oxides content.

(w) Reference Method 25 shall be used for the determination of visibility.

(x) Reference Method 26 shall be used for the determination of particulate matter content.

(y) Reference Method 27 shall be used for the determination of sulfur dioxide content.

(z) Reference Method 28 shall be used for the determination of nitrogen oxides content.

(aa) Reference Method 29 shall be used for the determination of visibility.

(bb) Reference Method 30 shall be used for the determination of particulate matter content.

(cc) Reference Method 31 shall be used for the determination of sulfur dioxide content.

(dd) Reference Method 32 shall be used for the determination of nitrogen oxides content.
degrees Centigrade (320 degrees Fahrenheit).

(3) For Reference Methods 6 and 7:
(a) The sampling site shall be the same as the site selected for Reference Method 5;
(b) The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) meter (3.3 ft) and;
(c) For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6:
(a) The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 dscm (0.71 dscm) for each sample;
(b) The arithmetic mean of two (2) samples shall constitute one (1) run and;
(c) Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7:
(a) Each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals; and
(b) The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(a), (b), and (c) of this section, the emissions expressed in million BTU (lbmillion BTU) shall be determined by the following procedure:
E = pollutant concentration, million BTU;
(F) = pollutant concentration, gas (lbH2).
determined by Reference Methods 5, 6, or 7;
(c) Percent oxygen:
1. Shall equal oxygen content by volume (expressed as percent), dry basis; and
2. Shall be determined using the integrated grab sampling and analysis procedures of Reference Method 3:
3. For determination of sulfur dioxide and nitrogen oxides, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Reference Methods 5 and 7 determinations;
4. For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 pursuant to subsection (2) of this section;
5. Reference Method 1 shall be used for selection of the number of traverse points except that not more than twelve (12) sample points shall be required; and
6. F = a factor as determined in Section 7(5) of this administrative regulation.

(7) If a combination of fossil fuels are fired, the heat input, expressed in million BTU (BTU/hr), shall be determined during each testing period by multiplying the gross caloric value of each fuel fired by the rate of fuel burned, in which:
(a) Gross caloric value shall be determined in accordance with ASTM method D2016-66(72) (solid fuels), D240-76 (liquid fuels), or D1225-64(70) (gaseous fuels) as applicable;
(b) The rate of fuel burned during each testing period shall be determined by the applicable method and shall be confirmed by a material balance over the steam generation system.

Section 1—Applicability.

The provisions of this administrative regulation shall apply to each affected facility or the applicable classification data defined below. Any affected facility subject to 401 KAR 60.016 is not subject to this administrative regulation.

Section 2—Definitions.

As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401 KAR 60.016.

(1) Affected facility means an individual heat exchanger having a heat input capacity of more than one (1) million BTU per hour;

(2) Indirect heat exchanger means any piece of equipment, apparatus or contrivance used for the combustion of fuel in which the energy-producer is transferred to its point-of-use through a medium that does not come in contact with or add to the products of combustion.

(3) Classification date means:
(a) August 17, 1974 for affected facilities with a capacity of more than 250 million BTU per hour heat input with respect to particulate emissions, sulfur dioxide emissions and (fules other that lignite and coal-burned) nitrogen oxide emissions;
(b) April 4, 1979 for affected facilities with a capacity of 250 million BTU per hour heat input or less with respect to particulate emissions and sulfur dioxide emissions;
(c) December 22, 1976 for affected facilities with a capacity of more than 250 million BTU per hour heat input with respect to nitrogen oxide if lignite is the fuel burned.

Section 2—Method for Determining Allowable Emission Rates.

(1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities within a source, including those for which an application to construct, modify or reconstruct has been submitted to the cabinet, shall be used as specified in Sections 4 and 5 of the administrative regulation to determine the allowable emission rate in terms of pounds of effluent per million BTU input. The total heat input of any affected facility is assigned an allowable emission rate by the cabinet, at no time thereafter shall that rate be changed due to inclusion or shutdown of any affected facility at the source.

(3) (a) A source may petition the cabinet to establish an allowable emission rate which may be apportioned without regard to individual input of those sources where the conditions specified in paragraphs (b), (c), and (d) of subsection 1 are met. Such allowable emission rate shall be determined according to the following equation.

F = (A - B) x C, where
A = the allowable emission rate (in pounds per million BTU input) as determined according to subsection 1 of this section;
B = the total rated heat input (in millions of BTU per hour) of all affected facilities (in terms of their conditions as specified in paragraphs (b), (c), and (d) of subsection 1) within the source, including those for which an application to construct, modify or reconstruct has been submitted to the cabinet;
C = the total rated heat input (in millions of BTU per hour) of all affected facilities within the source, including those for which an application to construct, modify or reconstruct has been submitted to the cabinet;
D = the allowable emission rate (in pounds per million BTU input) as determined according to 401 KAR 61.015, Section 2(2);
E = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced before the applicable classification date;
F = the alternate allowable emission rate (in pounds per actual million BTU input).

(2) At no time shall the owner or operator of the source allow the total emissions in pounds per hour from all affected facilities within the source divided by the total actual heat input (in millions of BTU per hour) of all affected facilities within the source to exceed the alternate allowable emission rate as determined by paragraphs (a), (b), (c), and (d) of subsection 1.

(3) At no time shall the owner or operator of any source subject to the provisions of this administrative regulation, shall be required to maintain compliance with the applicable classification data or subsection 1 of this section:

(4) Upon petition of the cabinet following the subsection if the owner or operator demonstrates to the cabinet's satisfaction that the source will maintain compliance with this subsection on a continual basis.

Section 4—Standard for Particulate Matter.

Except as provided in Section 3 of this administrative regulation, no owner or operator of an affected facility subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere...
from that affected facility, particulate matter in excess of that specified below:

(3) For sources having a total heat input capacity, as determined by Section 3(1) of this administrative regulation, which is:

(a) Eighty-five percent of the BTU per hour or more, the standard is 0.55 pounds per million BTU actual heat input;

(b) 250 million BTU per hour or more, the standard is one-tenth (0.10) pounds per million BTU actual heat input;

(c) For heat input values between those specified in paragraphs (a) and (b) of this subsection, the standard in pounds per million BTU total heat input, is equal to: 0.8534 times that quantity-by-inputting by raising the total heat input capacity (in millions of BTU per hour) to the 0.2086 power;

(2) Emissions which exhibit greater than twenty-two (22) percent opacity except:

(a) That, for indirect heat exchangers with heat input capacity of 250 million BTU per hour or more, a maximum of twenty-seven (27) percent opacity shall be permissible for not more than one (1) minute, provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendation;

Section 5—Standard for Sulfur Dioxide. Except as provided in Section 3(1) of this administrative regulation, no owner or operator of a facility subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere from that affected facility, any gases which contain sulfur dioxide in excess of that specified below:

(1) For sources which have a total heat input capacity, as determined by Section 3(1) of this administrative regulation, which is:

(a) Ten (10) million BTU per hour or less, the standard is three (3.0) pounds per million BTU actual heat input for combustion of liquid and gaseous fuels, and five (5.0) pounds per million BTU actual heat input for combustion of solid fuels;

(b) 250 million BTU per hour or more, the standard is eight-tenths (0.8) pounds per million BTU actual heat input for combustion of liquid and gaseous fuels, and one- and two-tenths (1.2) pounds per million BTU actual heat input for combustion of solid fuels;

(c) For heat input values between those specified in paragraphs (a) and (b) of this subsection, the standard in pounds per million BTU actual heat input, is equal to:

1. For combustion of liquid and gaseous fuels, 7.7233 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.4105 power; and

2. For combustion of solid fuels, 13 876.1 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.4434 power.

(2) When different fuels are burned simultaneously in any combination the applicable standard shall be determined by proration using the equation given in Appendix A of this administrative regulation.

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

Section 6—Standard for Nitrogen Oxides. (1) No owner or operator of an affected facility with a heat input capacity of 250 million BTU per hour or more subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere any gases which contain nitrogen oxides, expressed as nitrogen dioxide, in excess of:

(a) Two-tenths (0.20) lb. per million BTU heat input (0.36 g. per million cal), derived from gaseous fuel;

(b) Three-tenths (0.30) lb. per million BTU heat input (0.54 g. per million cal), derived from liquid fuel;

(c) Seven-tenths (0.70) lb. per million BTU heat input (1.26 g. per million cal) derived from solid fuel (except lignite);

(d) Six-tenths (0.60) lb. per million BTU heat input (1.08 g. per million cal), derived from lignite or lignite and wood residue (except as provided under subparagraph (e) of this subsection).

(2) Eighty-five percent of the BTU per hour or more, the standard is 0.55 pounds per million BTU derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fired unit.

(3) Except as provided in subsection (2) and (4) of this section, when different fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the equation given in Appendix B of this administrative regulation.

(4) When a fossil fuel containing at least twenty-five (25) percent by weight of coal refuse is burned in combination with gaseous, liquid, or other fossil fuel or wood residue, the standard for nitrogen oxides does not apply.

Section 7—Emission and Fuel Monitoring. The provisions of this section shall be applied to any affected facility of more than 250 million BTU per hour-rated heat input capacity. Each owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems for measuring the opacity of emissions, sulfur dioxide emissions, nitrogen dioxide emissions, or any combination thereof, continuous monitoring systems for measuring sulfur dioxide emissions are not required.

(2) Certain of the continuous monitoring system requirements under subsection (1) of this section do not apply to owners or operators subject to the following conditions:

(a) For an indirect heat exchanger that burns only gaseous fuels, continuous monitoring systems for measuring the opacity of emissions are not required;

(b) For an indirect heat exchanger that burns only natural gas, wood, or any combination thereof, continuous monitoring systems for measuring sulfur dioxide emissions are not required.

(c) Notwithstanding 401 KAR 50-006, Section 4(1), installation of a continuous monitoring system for nitrogen oxides may be delayed until after the initial performance test under 401 KAR 50-006, Section 2, have been conducted. If the owner or operator demonstrates during the performance test that emissions of nitrogen oxides are less than seventy (70) percent of the applicable standard, then in Section 3 of this administrative regulation, a continuous monitoring system for measuring nitrogen oxide emissions is not required. If the initial performance test results show that nitrogen oxide emissions are greater than seventy (70) percent of the applicable standard, the owner or operator shall install a continuous monitoring system for nitrogen oxides within one (1) year after the date of the initial performance test under 401 KAR 50-006, Section 2, and comply with all other applicable monitoring requirements under this chapter.

(d) If an owner or operator does not install any continuous monitoring systems for sulfur dioxide or nitrogen oxides, as provided under paragraphs (a) and (c) or paragraphs (b) and (d) of this subsection, a continuous monitoring system for measuring either oxygen or carbon dioxide is not required.

(e) For an indirect heat exchanger that does not use a flue-gas desulfurization device, a continuous monitoring system for measuring sulfur dioxide emissions is not required if the owner or operator monitors sulfur dioxide emissions by fuel sampling and analysis under subsection (5) of this section.

(f) For performance evaluations under 401 KAR 50-006, Section 4(1), and emission checks under 401 KAR 50-006, Section 4(4), the following procedures shall be used:

(a) Reference Methods 6-0-7, filed by reference in 401 KAR 50-015, to determine shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

(b) Sulfur dioxide or nitrogen oxide, as applicable, shall be used

(c) For a continuous monitoring system measuring the opacity of emissions shall be eighty (80), ninety (90), or 100 percent and for a continuous monitoring system measuring sulfur oxides the opacity shall be determined as shown in Appendix C of this administrative regulation.

(d) All span values computed under paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 ppm.

(e) For an indirect-heat exchanger that simultaneously burns fossil fuel and nonfossil fuel, the span value of all continuous monitoring systems shall be subject to the cabinet's approval.

(f) A continuous-monitoring system for measuring either oxygen or carbon dioxide in the flue gases shall be installed, calibrated, maintained and operated by the owner or operator.

(g) For any continuous-monitoring system installed under subsection (1) of this section, the following conversion procedures shall be used to convert the continuous-monitoring data into units of the applicable standards (ng/l, lb/million BTU):

(a) When a continuous-monitoring system for measuring oxygen is selected, the measurement of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the cabinet and the U.S. EPA shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used: C = (20.9CF / (20.9 - % oxygen)) where % E, C, F, and % oxygen are determined under subsection (6) of the section.

(b) When a continuous-monitoring system for measuring carbon dioxide is selected, the measurement of a pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the cabinet and the U.S. EPA shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used: C = (100 CF / (100 - % carbon dioxide)) where % E, C, F, and % carbon dioxide are determined under subsection (6) of the section.

(h) The values used in the equations under subsection (5)(a) and (b) of this section are derived as follows:

(a) E = Pollutant emission, g/million cal / (lb/million BTU)

(b) C = Pollutant concentration, g/dcm (lb/defl), determined by multiplying the average concentration (ppm) for each one (1) hour period by 0.000416 M / g/dcm per ppm, two and five tenths (2.5) times (10) raised to the negative nine (9) power times M lb/defl per ppm where M = pollutant molecular weight, g/g/mole (lb/defl mole).

M = 64.07 for sulfur dioxide and 46.01 for nitrogen oxides.

(d) F = F, e = factor representing a ratio of the volume of dry flue gases generated to the carbon dioxide of the fuel combusted (F) and a factor representing a ratio of the volume of carbon dioxide generated to the carbon dioxide of the fuel combusted (F); respectively, as follows. (ASTM designations are listed by reference in 401 KAR 50.015):

4. For anthracite coal as-classified according to ASTM D388-66(72), F = 10.140 defl/million BTU and F = 1810.0 scf CO/ million BTU.

5. For subbituminous and bituminous coal as-classified according to ASTM D388-66(72), F = 9320 defl/million BTU and F = 1810.0 scf CO/ million BTU.

6. For coal: 120 defl/million BTU and F = 1810.0 scf CO/ million BTU.

7. For natural gas, propane and butane fuels, F = 1040.0 scf CO/ million BTU for natural gas, 1300.0 scf CO/ million BTU for propane, and 1260.0 scf CO/ million BTU for butane.

6. For natural gas, F = 0.9745 defl/million BTU and F = 1260.0 scf CO/ million BTU.

8. For wood residues other than bark, F = 0.9293 defl/million BTU and F = 1450.0 scf CO/ million BTU.

9. For natural gas, F = 1040.0 scf CO/ million BTU.

10. For lignite coal as-classified according to ASTM D388-66(72), F = 0.0000 defl/million BTU and F = 1260.0 scf CO/ million BTU.

The owner or operator may use the equations given in Appendix D of this administrative regulation to determine a F factor (defl/million cal, or scf CO/ million BTU) on a dry basis (if it is desired to calculate F on a wet basis, consult with the cabinet) or F factor (som CO/ million cal, or scf CO/ million BTU) on either basis in lieu of the F or Fe factors specified in paragraph (c) of this subsection.

-1328-
be twenty (20) minutes and the minimum sampling volume shall be 0.22 cubic feet (0.71 cubic feet) for each sample. The arithmetic mean of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(a), (b), and (c) of this section, the emissions expressed in gallons per hour (gph) shall be determined by the following procedure:

\[ C = \frac{P \times E \times V}{B} \]

(a) \( E \) = pollutant emission, g/million Btu (g/million BTU)
(b) \( C \) = pollutant concentration, g/dscm (lb/mcf)
determined by Reference Methods 5, 6, or 7.
(c) \( \% \) oxygen = oxygen content by volume (expressed as percent), dry basis.

Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures of Reference Method 3 as applicable. The sample shall be obtained as follows:

\[ F = \frac{207.2(\% H) + 85.5(\% C) + 35.6(\% S) + 8.7(\% N) - 28.7(\% O)}{GCV} \]

\[ F = 10^9 \]

\[ GCV \]

\[ Fo = 2.0 \times 10^{-6}(\% C) \]

\[ GCV \]

\[ Fo = 321.2 \times 10^{-6}(\% C) \]

\[ GCV \]

Where:
- \( F \) = the fraction of total heat input derived from gaseous fossil fuel,
- \( y \) = the fraction of total heat input derived from coal,
- \( z \) = the fraction of total heat input derived from solid fossil fuel.

APPENDIX A TO 401 KAR 59.015
DETERMINATION OF ALLOWABLE SULFUR DIOXIDE EMISSION

Allowable sulfur dioxide emission in pounds per million BTU per hour heat input =

\[ y(a) + x(b) \]

\[ y + z \]

Where:
- \( y \) = the percent of total heat input from gaseous fuel,
- \( a \) = the allowable sulfur dioxide emission in pounds per million BTU heat input from gaseous fuel,
- \( b \) = the percent of total heat input from solid fuel,
- \( x \) = the allowable sulfur dioxide emission in pounds per million BTU heat input from solid fuel.

APPENDIX B TO 401 KAR 59.015
DETERMINATION OF ALLOWABLE NITROGEN DIOXIDE EMISSION

Allowable nitrogen dioxide emission in pounds per million BTU per hour heat input =

\[ x(0.20) + y(0.50) + z(0.70) + w(0.60) \]

\[ x + y + z + w \]

Where:
- \( x \) = the percent of total heat input derived from gaseous fuel,
- \( y \) = the percent of total heat input derived from coal,
- \( z \) = the percent of total heat input derived from solid fuel, and
- \( w \) = the percent of total heat input derived from lignite.
Leonard K. Peters, Secretary  

Approved by agency: October 10, 2008  

Filed with LRC: October 13, 2008 at 4 p.m.  

Public hearing and public comment period: A public hearing on this administrative regulation shall be held November 21, 2008, at the conference room of the division for air quality, 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 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 do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.  

Contact person: Millie Ellis, Environmental Technology III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666, e-mail: millie.ellis@ky.gov.  

Regulatory impact analysis and tiering statement  

Contact person: Millie Ellis, Environmental Technology III  

1. Provide a brief summary of:  
   (a) What this administrative regulation does. This administrative regulation establishes standards of performance for new indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour.  
   (b) The necessity of this administrative regulation. This administrative regulation regulates indirect heat exchangers as part of the Kentucky State Implementation Plan (SIP).  
   (c) How this administrative regulation conforms to the content of the governing statutes: KRS 224.10-100 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from new indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour or more that are not subject to a federal New Source Performance Standard (NSPS) as required under the Kentucky SIP.  
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment to this administrative regulation regulates indirect heat exchangers as required under the Kentucky SIP.  
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
      (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates reference methods that are available to regulated entities for monitoring emissions from indirect heat exchangers. The amendment also brings the regulatory language into conformance with KRS Chapter 13A drafting requirements.  
      (b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to provide regulated entities with an approved alternative to the established reference method for measuring opacity. The amendment allows the use of particulate matter continuous emission monitoring systems (PM CEMS) in addition to the established use of a continuous monitoring system for opacity (COMS). While this is the only substantive amendment being proposed, the existing administrative regulation language has been slightly rewritten to bring the administrative regulation into conformance with the requirements of KRS Chapter 13A.  
   (c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation, as amended, conforms to KRS Chapter 224 in that it provides the same test method alternatives that are allowed under the federal regulation, 40 CFR Part 60, Subpart D.  
   (d) How the amendment will assist in the effective administration of statutes: The administrative regulation, as amended, will provide a legal reference with additional reference methods that are approved by the cabinet and the U.S. EPA.  
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will continue to apply to indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour or more.  
   (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: While owners or operators of indirect heat exchangers subject to this administrative regulation will continue to be required to monitor the emissions from these units and to maintain the units so that emissions are within permitted limits, the amendment results in no new requirements for sources. Instead, the amendment provides additional flexibility to sources for demonstrating compliance.  
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There are no added costs resulting from this amendment, but rather, the amendment will result in cost savings to regulated sources.  
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, sources will have greater flexibility in choosing reference methods for monitoring emissions and demonstrating compliance for the opacity standard.  
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:  
      (a) Initially: There are no additional costs associated with this amendment.  
      (b) On a continuing basis: While there are no new costs associated with the amendment to this administrative regulation, continuing costs are included in the Division for Air Quality's normal day-to-day operating budget.  
      (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has not been included in the Division for Air Quality's operating budget.  
      (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 is necessary to implement the amendment to this administrative regulation.  
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.  
   (9) Tiering is tiering applied? Consistent with the federal regulation for indirect heat exchangers, this administrative regulation is tiered by heat input capacity size and by the variations in fuels used.  

Fiscal note on state and local government  

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes  
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation has the potential to affect any unit, part or division of state or local government operating an emissions unit that meets the applicability determination of Section 2 of this administrative regulation.  
3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regu-
VOLUME 35, NUMBER 5 — NOVEMBER 1, 2008

Section 1. Applicability. This administrative regulation shall apply to sources subject to an administrative regulation in 401 KAR Chapter 61.

Section 2. Performance Test. (1) Sources shall conduct performance tests pursuant to 401 KAR 60-045 and shall provide the results to the cabinet in a written report.

(2) Unless required by the cabinet, in writing, pursuant to 401 KAR 50-045, the following emissions units shall be exempt from subsection (1) of this section:

(a) Process operations with a process weight rate of less than 100 tons per hour;

(b) Indirect heat exchangers with less than 250 million BTU heat input;

(c) Incinerators with a charging rate of forty-five (45) metric tons per day (fifty (50) tons per day) or less;


Section 3. Emission Monitoring. (1) Sources in a category listed in subsection (2) of this section shall:

(a) Install, calibrate, operate, and maintain monitoring equipment necessary for continuously monitoring and recording the parameters specified in this section for the applicable source categories;

(b) Complete the installation and performance testing of monitoring equipment required in paragraph (a) of this subsection and begin monitoring and recording within eighteen (18) months of promulgation of an applicable performance specification in 40 C.F.R. Part 60, Appendix D.

Source categories and respective monitoring requirements shall be as follows:

(a) Indirect heat exchangers, as specified in subsection (5)(a) of this section, shall be monitored for opacity or particulate matter emissions, sulfur dioxide emissions, and oxygen or carbon dioxide;

(b) Sulfuric acid plants, as specified in subsection (5)(b) of this section, shall be monitored for sulfur dioxide emissions;

(c) Coke and coal plants, as specified in subsection (5)(c) of this section, shall be monitored for nitrogen oxides emissions;

(d) Petrolem refinery units shall be monitored as specified in subsection (5)(d) of this section;

(e) Incinerators, as specified in subsection (5)(e) of this section, shall be monitored for opacity;

(f) Control devices, as specified in subsection (5)(f) of this section, shall be monitored for opacity;

(3) Sources retired by June 29, 1984, shall be exempt from the requirements of this section if operation ceased on or before that date.

(4) During periods of monitoring system malfunction, a temporary exemption from the monitoring and reporting requirements of this section may be provided pursuant to 401 KAR 50-055 if the source demonstrates that the malfunction was unavoidable and is considered as acceptable as practicable.

(5) Monitoring requirements:

(a) Except as provided in this paragraph, for indirect heat exchangers with an annual average capacity factor of greater than thirty (30) percent that are subject to an emissions standard in 401 KAR 61-115, the following monitoring requirements shall apply, as applicable:

(i) For indirect heat exchangers of greater than 250 million BTU per hour heat input:

(a) A continuous monitoring system for opacity or particulate matter meeting the appropriate performance specification in subsection (6) of this section, except that an indirect heat exchanger shall not be required to have a continuous monitoring system if:

(1) Gaseous fuel oil or a mixture of gas and oil are the only fuels burned and the indirect heat exchanger is in compliance with the applicable opacity or particulate matter standards without the use of particulate matter collection equipment; and

(2) The source has never been found, through an administrative or judicial proceeding, to be in violation of a visible emission standard; and

(ii) In addition to the requirements in subparagraph (i) of this paragraph, for continuous opacity monitoring:

(a) The opacity system shall be capable of detecting opacity in excess of one percent (1%) anytime; and

(b) The opacity system shall be capable of detecting opacity in excess of five percent (5%) at any time.

(b) For other indirect heat exchangers:

(i) The opacity system shall be capable of detecting opacity in excess of one percent (1%) anytime; and

(ii) The opacity system shall be capable of detecting opacity in excess of five percent (5%) at any time.

(iii) The system shall be capable of detecting opacity in excess of five percent (5%) at any time.
b. CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section, except that... heat exchangers burning only natural gas, wood waste, or biomass shall be exempt from this requirement and... 

2. If measurements of oxygen or carbon dioxide in the flue gas are necessary, the relevant sulfur dioxide or nitrogen oxides continuous emission monitoring data to the units of the emission standard, CEMS for percent oxygen or carbon dioxide meeting the appropriate performance specifications in subsection (6) of this section. 

(a) For sulfuric acid plants producing sulfuric acid with a contact process that burns elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, the following monitoring requirement shall apply:

1. CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section for each sulfuric acid producing unit at the source that:

(a) Has greater than 200 tons per day production capacity as expressed in 100 percent acid; and
(b) Produces sulfuric acid by the contact process that burns elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge; and

2. Units that do not use the conversion to sulfuric acid as a primary means to prevent the emissions of sulfur dioxide and other sulfur compounds into the atmosphere shall not be required to have CEMS. 

(c) For nitric acid plants, the following monitoring requirement shall apply: CEMS for nitrogen oxides meeting the appropriate performance specifications in subsection (6) of this section for nitric acid producing units that:

1. Produce nitric acid thirty (30) to seventy (70) percent by weight in strength by either the pressure or atmospheric process; and

2. Have greater than 200 tons per day production capacity expressed as 100 percent acid.

(d) For petroleum refineries the following monitoring requirements shall apply:

1. For catalytic regenerators used in conjunction with fluid bed cracking units of greater than 20,000 barrels per day fresh feed capacity, a continuous monitoring system for opacity or PM CEMS meeting the appropriate performance specifications in subsection (6) of this section;

2a. For sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gases subject to 401 KAR 61:145, CEMS meeting the appropriate performance specifications in subsection (6) of this section, in which:

(i) A fuel gas polishing unit is used to prepare calibration gas mixtures under 40 C.F.R. Part 60, Appendix B, Performance Specification 2, Section 2.1, and for calibration checks shall be sulfur dioxide;

(ii) The span shall be set at 100 ppm; and

(iii) Reference Method 6 shall be used for conducting monitoring system performance evaluations; or

b. If compliance is achieved by removing hydrogen sulfide from the fuel gas before it is burned, for fuel gases burned in fuel gas combustion devices subject to 401 KAR 61:145, an instrument that meets the appropriate performance specifications in 40 C.F.R. Part 60, Appendix B for continuously monitoring and recording concentrations of hydrogen sulfide in the fuel gases burned, in which:

1. Fuel gas combustion devices having a common source of fuel gas may be monitored at one (1) location, if monitoring at this location accurately represents the concentration of hydrogen sulfide in the fuel gas burned; and

2. The span of the continuous monitoring system shall be 300 ppm;

3. For Claus sulfur recovery plants subject to 401 KAR 61:145:

a. If compliance is achieved with an oxidation control system or a reduction control system followed by incineration, CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section with the span set at 500 ppm; and

b. If compliance is achieved with a reduction control system not followed by incineration, CEMS meeting the appropriate performance specifications in subsection (6) of this section with the span set at 200 ppm for the measurement of hydrogen sulfide emissions and 600 ppm for reduced sulfur compounds emissions; and

4. For fluid catalytic cracking unit catalyst regenerators subject to 401 KAR 61:145, CEMS for sulfur dioxide meeting the appropriate performance specification in subsection (6) of this section, with the span set at 1,500 ppm.

(a) For incinerators with a charging capacity of more than forty-five (45) metric tons per day (fifty (50) tonns/day) continuous monitoring system for opacity or PM CEMS for particulates meeting the appropriate performance specifications in subsection (6) of this section. 

(6) Except as provided in subsection (7) of this section, sources subject to this section shall demonstrate compliance with the following performance specifications in 40 C.F.R. Part 60, Appendix B:

(a) Continuous monitoring systems for opacity shall comply with Performance Specification 1; and

2. For CEMS for particulate matter shall comply with Performance Specification 11;

(b) CEMS for sulfur dioxide shall comply with Performance Specification 2;

(c) CEMS for nitrogen oxides shall comply with Performance Specification 2;

(d) CEMS for oxygen shall comply with Performance Specification 3; and

(e) CEMS for carbon dioxide shall comply with Performance Specification 3.

(7) Sources entering into a binding contractual obligation prior to September 11, 1974, to purchase specific continuous monitoring system components and sources installing a system prior to October 6, 1975, shall comply with the following requirements:

(a) Continuous monitoring systems for opacity shall:

1. Measure opacity levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent and

2. Use the Calibration Error Test and associated calculation procedures in 40 C.F.R. Part 60, Appendix B, Performance Specification 1:

(b) CEMS for nitrogen oxides and sulfur dioxide shall:

1. Measure emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent and

2. Use the Calibration Error Test, the Field Test for Accuracy (Reliability), and associated operating and sampling procedures in 40 C.F.R. Part 60, Appendix B, Performance Specification 2, Section 2.1, and

(8) If required by the cabinet, in writing, pursuant to 401 KAR 50:045, CEMS installed on emissions unit prior to October 6, 1975, shall conduct tests under paragraphs (a) and (b) of this subsection as appropriate; and

(d) All continuous monitoring systems specified in this subsection shall:

1. Be maintained and replaced with new or upgraded equipment as necessary; and

2. Demonstrated to comply with applicable performance specifications on or before June 22, 1984.

(9) For CEMS calibration gas mixtures:

(a) For systems monitoring sulfur dioxide installed on indirect heat exchangers, sulfur acid plants or petroleum refinery fluid catalytic cracking units regenerators, the pollutant gas used to prepare the mixture shall be sulfur dioxide pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2, Section 2.1, and

(b) For systems monitoring nitrogen oxides installed on nitric acid plants, the pollutant gas used to prepare the mixture shall be nitrogen dioxide pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2, Section 2.1, and

(9) The time necessary for a monitoring system to complete a cycle of operation to sample, analyze, and record an emission measurement, shall be as follows:

(a) Continuous monitoring systems for opacity shall complete a minimum of one (1) cycle of operation for each successive ten (10) second period, and

(b) CEMS for measuring oxides of nitrogen, carbon dioxide,
Oxygen, or sulfur dioxide, shall complete a minimum of one (1) cycle of operation for each successive fifteen (15) minute period.

(11) CEMS devices shall be installed in a location that ensures representative measurements of emissions or process parameters from each emissions unit pursuant to applicable performance specifications in 40 C.F.R. Part 60, Appendix B.

(11) For combined effluents from two (2) or more emissions units:

(a) If the units are of similar design and operating characteristics, CEMS may be installed on an effluent stream before being released to the atmosphere; or

(b) If the combined emissions units are not of similar design and operating characteristics, or if the effluent from one (1) of the emissions units is released to the atmosphere through more than one (1) point, the source may submit to the cabinet for approval an alternate procedure demonstrating the appropriateness of installing CEMS on the combined effluent.

(12) Sources required to install continuous monitoring systems shall:

(a) Record the zero and span drift of the monitoring system pursuant to the method prescribed by the manufacturer of the system and shall subject the continuous monitoring system to the manufacturer's recommended zero and span check at least once daily or follow the manufacturer's recommendations if adjustments at shorter intervals are recommended.

(b) Adjust the zero and span if the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift exceeds ten (10) percent of the applicable emission standard.

(c) If available, use span and zero gases certified by the manufacturer to be traceable to National Institute of Standards and Technology reference gases;

(d) Use nitrogen dioxide for daily checks as applicable and if applicable, use span and zero gases certified by the manufacturer to be traceable to National Institute of Standards and Technology reference gases;

(e) Reanalyze by independent analyses, sample and zero gases every five (5) months from the date of manufacture using the appropriate reference methods in 40 C.F.R. Part 60, Appendix A as follows:

1. Reference Method 6 for sulfur dioxide;
2. Reference Method 7 for nitrogen dioxide; and

(13) Instrument span shall be kept at approximately 200 percent of the expected instrument data output corresponding to the emission standards to which the source is subject.

(14) Sources may be allowed to use equivalent procedures and requirements approved by the U.S. EPA for continuous monitoring systems as follows:

(a) Alternate monitoring requirements to accommodate CEMS that require corrections for stack moisture conditions;

(b) Alternate locations for installing continuous monitoring systems or monitoring devices if the source demonstrates to the cabinet that installation at alternate locations will enable accurate and representative measurements;

(c) Alternative procedures for performing calibration checks;

(d) Alternative monitoring requirements if the effluent from two (2) or more identical emissions units is released to the atmosphere through more than one (1) point if the procedures generate accurate emission averages; and

(e) Alternate continuous monitoring systems that do not meet the spectral response requirements in 40 C.F.R. Part 60, Appendix B, Specification 1, but that adequately demonstrate, for each applicable emissions unit, a definite and consistent relationship between their measurements and the opacity measurements of Performance Specification 1.

(15) For each continuous monitoring system, the source shall submit, in writing to the cabinet, for every calendar quarter, a written report of the test of each emissions unit including the nature and causes of the excess emissions, if known, as follows:

(a) The averaging period used for data reporting shall correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the applicable pollutant and source category, and quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter;

(b) For opacity measurements, the summary shall consist of the average of average opacity over the successive two (2) minute averages of opacity greater than the opacity standard in the applicable standard for each hour of operation of the facility, as follows:

1. Average values may be obtained by integration over the averaging period or by mathematically averaging a minimum of four (4) equally spaced, instantaneous opacity measurements per minute.

2. All exempted time periods shall be considered before determining the excess average of opacity for example, if an administrative regulation allows two (2) minutes of opacity measurements in excess of the standard, the source shall report all opacity averages, in any one (1) hour, in excess of the standard, minus the two (2) minute exemption; and

3. If more than one (1) opacity standard applies, excess emissions data shall be submitted in relation to all applicable standards.

(c) For particular matter measurements, the summary shall be based on twenty-four (24) hour block averaging times.

(d) For gaseous measurements, the summary shall consist of hourly averages expressed in the units of the applicable standard;

(e) Except for zero and span checks, the data and time of each period during which the CEMS was not operating, including proof of CEMS performance during system repairs and the nature of the repairs or adjustments;

(f) If excess emissions have not occurred and the CEMS have not been inoperative, repaired, or adjusted, this information shall be included in the report;

(g) The source shall maintain a file for a minimum of two (2) years from the date of collection of the data or submission to the cabinet of:

1. All information reported in the quarterly summaries;

2. All other data collected by the CEMS or as necessary to certify monitoring data to the units of the applicable standard;

(16) Sources shall use the following procedures for converting monitoring data to units of the standard if necessary:

(a) For direct heat exchangers, the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million BTU):

1. If the source elects to measure oxygen in the flue gases for an indirect heat exchanger pursuant to subsection (5)(a)(12) of this section, the measurement of the pollutant concentration and oxygen concentration shall be on a dry basis and the following equation shall be used for the conversion procedure: $E = CF(20.9 / 20.8\%O_2)$;

2. If the source elects to measure carbon dioxide in the flue gases pursuant to subsection (5)(a)(12) of this section, the measurement of the pollutant concentration and carbon dioxide concentration shall be on a consistent wet or dry basis and the following equation shall be used for the conversion procedure: $E = CF((100 / 5%CO_2)$ and

3. For subparagraphs 1 and 2 of this paragraph:

a. $E =$ pollutant emission, g/million cal (lb/million BTU);

b. $C =$ pollutant concentration, ppm (lb/lb)

c. $O_2 =$ pollutant concentration, ppm (lb/lb-script)

d. $M =$ pollutant molecular weight, g/mole (lb/lb-mole)

M = $\frac{4.16 \times 10^4 \ M \ g/dscm}{2.64 \times 10^4 \ M \ lb/dscf}$ per ppm

where $M =$ pollutant molecular weight, g/mole (lb/lb-mole)

$E =$ for sulfur dioxide and 46 for oxides of nitrogen;

$p,$ $%O_2,$ $%CO_2 =$ oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified in subsection (6) of this section;

$F =$ $\frac{a}{b}$ where $a$ and $b$ are:

$F =$ a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and

$F =$ a factor representing a ratio of the volume of the carbon dioxide generated to the calorific value of the fuel combusted (F), respectively. Values of $F$ and $Fc$ are given in 401 KAR 59.018 as applicable.

(b) For sulfite acid plants the owner or operator shall:

1. Establish a conversion factor (three (3) times daily pursuant to 40 C.F.R. 60.84);

2. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in kg/metric ton (lb/short ton): and
3. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly report required in subsection (15) of this section.

(c) The source may use data reporting or reduction procedures that vary from the provisions of this section if the source demonstrates to the cabinet that the alternate procedures are at least as protective and protective as the requirements of this section and the alternative procedures may include:

1. Alternative procedures for computing emission averages that do not require integration of data; and

2. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

(17) Sources may apply for approval of an alternative or equivalent method specified in 40 C.F.R. Part 50 or a test method specified in the Kentucky State Implementation Plan. If the alternative provisions are included in the source's permit and the source demonstrates:

(a) The inability of CEMS to provide accurate determinations of emissions at the emissions unit;

(b) The infrequent operation of the emissions unit;

(c) The requirements of this section impose an extreme economic burden on the source; or

(d) The CEMS is unable to be installed due to physical limitations at the source.

(Section 1. Applicability. The provisions of this chapter shall apply to the owner or operator of any existing source for which a standard of performance has been promulgated under this chapter.

Section 2. Performance Test. (1) On or before the completion of a control plan at an affected facility and at such other times as may be required by the cabinet, the owner or operator of an affected facility, except for those affected facilities specified below, shall conduct performance test(s) according to 401-KAR-50:045 and shall furnish the cabinet a written report of the results of such performance test(s).

(a) Process operation with a process weight rate of less than 400 ton per hour;

(b) Indirect heat exchanger of less than 250 million BTU heat input;

(c) Incinerator with a charging rate of forty-five (45) metric tons per day (fifty (50) tons per day) or less;


(2) The cabinet may require the owner or operator of any affected facility specified in subsection (1) (a) to (d) of this section to conduct performance test(s) according to 401-KAR-50:045 and furnish a written report of the results of such performance test(s).

Section 3. Emission Monitoring. This section sets forth the minimum requirements for continuous emission monitoring, recording, and reporting for source categories which are set forth. It includes the performance specifications, for accuracy, reliability, and durability of acceptable monitoring systems and techniques to convert emission data to units of applicable emission standards.

(1) The owner or operator of a source in a category listed below shall:

(a) Install, calibrate, operate, and maintain all monitoring equipment necessary for continuous monitoring of the pollutants specified in this section for the applicable source category;

(b) Complete the installation and performance tests of such equipment and begin monitoring and recording within eighteen (18) months from June 29, 1970, except as provided in paragraph (c) of the subsection;

(c) For continuous emission monitoring systems for which there are no performance specifications under Appendix B of 40 C.F.R. 60, filed by reference in 401-KAR-50:016, as of June 29, 1970, complete the installation and performance tests of such equipment and begin monitoring and recording within eighteen (18) months of promulgation of the applicable performance specification.
acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds. The owner or operator of each sulfuric acid plant of greater than 200 tons-per-day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section for each sulfuric acid-producing facility within such plant.

(e) Nitric acid plants. For the purposes of this administrative regulation, nitric acid plant means any facility producing nitric acid from 30 to seventy (70) percent by weight in strength by either the pressure or atmospheric pressure process. The owner or operator of each nitric acid plant of greater than 200 tons-per-day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of nitrogen oxides which meets the appropriate performance specifications as specified in subsection (7) of this section for each nitric acid-producing facility within such plant.

(d) Petroleum refineries. The owner or operator of each affected facility specified in this paragraph shall install, calibrate, maintain and operate a continuous monitoring system as follows:

1. A continuous monitoring system for the measurement of emissions for carcinoma-favoring floor-crushing acid-gas plants having a capacity greater than 20,000 barrels per day of feed to a continuous monitoring system for the measurement of hydrogen sulfide as specified under subparagraph 3 of this paragraph. The pollutant gas used to prepare calibration gas mixtures under Performance Specification 2 of 40 C.F.R. 60.60-60.61 for calibration checks shall be sulfur dioxide. The span shall be set at 100 ppm.

2. A continuous monitoring system for the measurement of sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gas-subject to 401 KAR 61:45 which meets the appropriate performance specifications as specified in subsection (7) of this section (except where a continuous monitoring system for the measurement of hydrogen sulfide is installed under subparagraph 3 of this paragraph). The pollutant gas used to prepare calibration gas mixtures under Performance Specification 2 of 40 C.F.R. 60.60-60.61 for calibration checks shall be sulfur dioxide. The span shall be set at 100 ppm.

3. An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gas burned in any fuel gas-combustion device subject to 401 KAR 61:45 which meets the appropriate performance specifications as specified in subsection (7) of this section, if compliance is achieved by removing hydrogen sulfide from the stack gas. Devices having a common source of fuel gas may be monitored at one (1) location, if monitoring at this location accurately represents the concentration of hydrogen sulfide in the fuel gas burned. The span of this continuous monitoring system shall be 300 ppm.

An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:45 which meets the appropriate performance specifications as specified in subsection (7) of this section, if compliance is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be set at 600 ppm.

An instrument for continuously monitoring and recording the concentration of hydrogen sulfide and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:45 which meets the appropriate performance specifications as specified in subsection (7) of this section, if compliance is achieved through the use of a reduction control system not followed by incineration. The span of this continuous monitoring system shall be set at 600 ppm.

An instrument for continuously monitoring and recording the concentration of sulfur dioxide in gas discharged into the atmosphere from fluid catalytic cracking unit catalytic regenerators subject to 401 KAR 61:45 which meets the appropriate performance specifications as specified in subsection (7) of this section. The span of this continuous monitoring system shall be 1,500 ppm.

Each incinerator with a charging capacity of more than forty-five (45) metric tons-per-day (fifty (50) tons-per-day) shall be installed, calibrated, maintained, and provide a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

Except as provided in subsection (6) of this section, all owners or operators who are required to comply with the section shall demonstrate compliance with the following performance specifications for Appendix B to 40 C.F.R. 60.

Continuous monitoring systems for measuring opacity shall comply with Performance Specification 1.

Continuous monitoring systems for measuring nitrogen oxides shall comply with Performance Specification 2.

Continuous monitoring systems for measuring oxygen shall comply with Performance Specification 3.

Continuous monitoring systems for measuring carbon dioxide shall comply with Performance Specification 2.

An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components or who installed continuous monitoring equipment prior to October 6, 1976 shall comply with the following requirements:

(a) Continuous monitoring systems for measuring opacity shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test and associated calculation procedure set forth in Performance Specification 1 of Appendix B to 40 C.F.R. 60 shall be used for demonstrating compliance with this specification.

(b) Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 2 of Appendix B to 40 C.F.R. 60 shall be used for demonstrating compliance with this specification.

(c) Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1976, may be required to conduct tests under paragraphs (a) and (b) of this subsection if requested by the cabinet.

(d) All continuous monitoring systems referenced by this subsection shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and the new or improved systems shall be demonstrated to comply with applicable performance specifications within five (5) years from June 20, 1979.

(e) Calibration gases. For sulfur dioxide monitoring systems installed on indirect heat exchangers, sulfuric acid plants or petroleum refinery fluid catalytic cracking unit regenerators, the pollutant gas used to prepare calibration gas mixtures (Section 2.1, Performance Specification 2, Appendix B to 40 C.F.R. 60) shall be sulfur dioxide. For nitrogen oxides monitoring systems, installed on nitric acid plants, the pollutant gas used to prepare calibration gas mixtures (Section 2.1, Performance Specification 2, Appendix B to 40 C.F.R. 60) shall be nitrogen dioxide. This gas shall also be used for dry checks and for monitoring compliance at the reference gas concentrations specified in Appendix A to 40 C.F.R. 60, as follows for sulfur dioxide, use Reference Method 6, for nitrogen dioxide, use Reference Method 4.
Method 7, and for carbon dioxide and oxygen use Reference Method 3.

(10) Cycling times. Cycling times include the total time a monitoring system requires to sample, analyze, and record an emission measurement.

(a) Continuous-monitoring systems for measuring opacity shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive ten (10) second period.

(b) Continuous-monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive fifteen (15) minute period.

(11) Monitor location. A continuous-monitoring device shall be installed such that representative measurements of emissions or process parameters (i.e., oxygen or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous-monitoring systems to obtain representative samples are contained in the applicable Performance Specifications of Appendix B of 40 C.F.R. 60.

(12) Combined effluents. When the effluents from two (2) or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere, the cabinet may allow monitoring systems to be installed on the combined effluent. When the affected facilities are not of similar design and operating characteristics, or when the effluent from one (1) affected facility is released to the atmosphere through more than one (1) point, the cabinet shall use alternate procedures to implement the intent of these requirements.

(13) Zero and span drift. Owners or operators of all continuous monitoring systems installed in accordance with the requirements of this subsection shall record the zero and span drift in accordance with the method prescribed by the manufacturer of each instrument, to subject the instruments to the manufacturer's recommended zero and span check at least once daily unless the manufacturer has recommended adjustments at shorter intervals.

(14) Span instrument exempt. The cabinet shall be approximately 200 percent of the expected instrument data display output corresponding to the emission standard of the source.

(15) Alternate procedures and requirements. The cabinet may allow equivalent procedures and requirements that have been approved by the U.S. EPA for continuous-monitoring systems as follows:

(a) Alternate monitoring requirements to accommodate continuous-monitoring systems that require corrections for stack-moisture conditions (e.g., an instrument measuring sulfur dioxide emissions on wet basis could be used with an instrument measuring oxygen concentration on a dry basis if acceptable methods of measuring stack-moisture conditions are used to allow accurate adjustments of the measured sulfur dioxide concentration to a dry basis).

(b) Alternate methods of installing continuous-monitoring systems or monitoring devices when the owner or operator can demonstrate to the satisfaction of the cabinet that installation at alternate locations will enable accurate and representative measurements.

(c) Alternative procedure for performing calibration checks (e.g., some instruments may demonstrate superior drift characteristics that require shaking at less frequent intervals).

(d) Alternate monitoring requirements when the effluent from two (2) or more monitoring facilities is released to the atmosphere through more than one (1) point (e.g., an exhaustive gaseous monitoring system used at several points may be approved if the procedures recommended are suitable for generating accurate emission averages).

(e) Alternate continuous-monitoring systems that do not meet the spectral-response requirements in Performance Specification 1, Appendix B of 40 C.F.R. 60, but adequately demonstrate a definite and consistent relationship between their measurements and the opacity measurements of a system complying with the requirements in Performance Specification 1. The cabinet may require that such demonstration be performed for each affected facility.

(16) Minimum data requirements. The following paragraphs set forth the minimum data reporting requirements. Both a printed summary and computer tape or cards shall be furnished in the format specified by the division.

(a) Owners or operators of facilities required to install continuous-monitoring systems shall submit for every calendar quarter, a written report of excess emissions and the nature and cause of the excess emissions if known. The averaging period used for data reporting should correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant source category in question. The report shall include, as a minimum, the data stipulated in this subsection. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter.

(b) For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of six (6) minute averages of opacity greater than the opacity standard in the applicable standard for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetic averaging of minimally six (6) continuous measurements for instantaneous opacity measurements per minute. Any time-period exempt shall be considered before determining the excess average of opacity (e.g., whenever a administrative-regulation allows two (2) minutes of opacity measurements in excess of the standard, the source shall report all opacity averages, in any one (1) hour, in excess of the standard, minus the two (2) minute exceptions more than that at any opacity standard exempt facilities, express instantaneous opacity measurements per minute).

(c) For gaseous measurements, the summary shall consist of hourly averages in the units of the applicable standard. The hourly averages shall not appear in the written summary, but shall be made available from the computer tape or cards.

(d) The date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of system repairs or adjustments shall be reported. Proof of continuous-monitoring system performance whenever system repairs or adjustments have been made is required.

(e) When no excess emissions or any continuous-monitoring systems have not been inoperative, repaired, or adjusted, such information shall be included in the report.

(f) Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous-monitoring system or as necessary to convert monitoring data to the units of the applicable standard for a minimum of two (2) years from the date of collection of such data or submission of such summaries.

(17) Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.

(a) For indirect heat exchangers the following procedures shall be used to convert gaseous emission-monitoring data to parts per million to milligrams per cubic foot (BTU) where necessary.

(b) When the owner or operator elects under subsection (6)(a)(3) of this section to measure oxygen in the flue gas, the measurement of the pollutant concentration and oxygen concentration shall each be on a dry basis and Equation 1 of the conversion procedures in Appendix A to this administrative regulation shall be used.

(c) When the owner or operator elects under subsection (6)(a)(3) of this section to measure carbon dioxide in the flue gas, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and Equation II of the conversion procedures in Appendix A to this administrative regulation shall be used.

(d) For sulfur dioxide plants the owner or operator shall:
1. Establish a conversion factor three (3) times daily according to the procedures in 401 KAR 69-035, Section 4(2).
2. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gas to obtain average sulfur dioxide emission rates in kilograms per hour (short ton/hour) and report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.

(e) The cabinet may allow data reporting or reduction procedures varying from those set forth in this section if the owner or operator of a source shows to the satisfaction of the cabinet that his procedures are at least as effective as those set forth in this section. Such procedures may include but are not limited to the following:

1. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).

2. Alternative methods of converting pollutant concentration measurements to the units of the emission standard.

(b) Special consideration: The cabinet may provide for approval, on a case-by-case basis, of alternative monitoring requirements different from the provisions of this section if the provisions of this section (i.e., the installation of a continuous emission monitoring system) cannot be implemented by sources of physical plant modifications or extreme economic reasons. In such cases, when the cabinet exempts any source subject to this section by use of this provision from installing continuous emission monitoring systems, the cabinet shall set forth alternative emission monitoring and reporting requirements (e.g., periodic manual stack tests) to satisfy the intent of these administrative regulations. Examples of such special cases include, but are not limited to, the following:

(a) Alternate monitoring requirements may be prescribed when installation of a continuous monitoring system or monitoring device specified by this section would not provide accurate determinations of emissions.

(b) Alternate monitoring requirements may be prescribed when the affected facility is infrequently operated.

(c) Alternative monitoring requirements may be prescribed when the cabinet deems that the requirements of this section would impose an extreme economic burden on the owner or operator. The burden of proof for an alleged "economic burden" is to be borne by the source.

(d) Alternative monitoring requirements may be prescribed when the cabinet deems that monitoring systems prescribed by this section cannot be installed due to physical limitations at the facility.

APPENDIX A TO 401 KAR 61.005

CONVERSION PROCEDURES

\[
E = \frac{CF(209)}{(20.9 - \%O_2)}
\]

\[
E = \frac{CF(100)}{\%CO_2}
\]

Where:

- \(E\) = pollutant emission, g/million cf (lb/million BTU).
- \(CF\) = pollutant concentration, g/dcm (lb/1000 ft).
- \(\%O_2\) = oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under Section 3(6)(3) of this administrative regulation.
- \(\%CO_2\) = oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under Section 3(6)(3) of this administrative regulation.
- \(F\) = a factor representing a ratio of the volume of dry flue gas to the calorific value of the fuel combusted (\(F\)), and a factor representing a ratio of the volume of the carbon dioxide generated to the calorific value of the fuel combusted (\(F\)) respectively. Values of \(F\) and \(F\) are given in 401 KAR 69-016 as applicable.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 10, 2008
FILED WITH LRC: October 13, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held November 21, 2008, at 10 a.m. (local time) in the Conference Room of the Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency 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 do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666, e-mail millie.ellis@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis, Environmental Technologist III

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes monitoring requirements, performance testing requirements, and other general provisions relating to sources subject to an administrative regulation in 401 KAR Chapter 61.

(b) The necessity of this administrative regulation: This administrative regulation establishes the general monitoring, performance testing, and reporting requirements for existing sources subject to an administrative regulation in 401 KAR Chapter 61.

(c) How this administrative regulation comports to the current of the authorizing statutes: KRS 224.10-100 authorizes the Energy and Environment Cabinet to adopt administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides requirements for monitoring, performance testing, and other general provisions for sources that are subject to an administrative regulation in 401 KAR Chapter 61, as required under the Kentucky State Implementation Plan (SIP).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides general provisions for existing sources that are subject to an administrative regulation in 401 KAR Chapter 61 as part of the Kentucky SIP.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates reference methods that are available to regulated entities for monitoring emissions from indirect heat exchangers. Thus, the amendment provides greater flexibility in testing and monitoring. The amendment also brings the language of this administrative regulation into conformance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to provide regulated sources with an approved alternative to established reference methods. While this is the only substantive amendment being made to this administrative regulation, the existing language has been totally re-written to bring the administrative regulation into conformance with the requirements of KRS Chapter 13A.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation, as amended, conforms to KRS Chapter 224 as it provides the same test method alternatives allowed under the federal regulation, 40 C.F.R. Part 60, Subpart D.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation, as amended, will provide sources with additional reference methods that are approved by the cabinet and the U.S. EPA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will continue to apply to existing sources that are subject to an administrative regulation in 401 KAR Chapter 61.

(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: While owners or operators of emissions units subject to this administrative regulation will continue to be required to monitor the emissions from these units and to maintain the units so that emissions are within the permitted limits, the amendment results in no new requirements for sources. Instead, the amendment provides additional flexibility for demonstrating compliance.

(b) In complying with the administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no added costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, sources will have greater flexibility in choosing reference methods for monitoring emissions and demonstrating compliance.

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

(a) Initially: There are no additional costs associated with this amendment.

(b) On a continuing basis: Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has already been included in the Division for Air Quality's operating budget.

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

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

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. 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 has the potential to affect any unit, part or division of state or local government operating an emissions unit that meets the applicability determination of Section 1 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. 40 C.F.R. 52.920(c) and Part 60 and KRS 224.10-100(5) authorize 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 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 proposed administrative regulation will generate no revenue.

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

(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. 52.920(c) and 40 C.F.R. Part 60.

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

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate consists of the approval of this administrative regulation to the Kentucky SIP. It requires any source described in Section 1 of the administrative regulation to meet the specified standards for particulate matter, sulfur dioxide, and nitrogen oxides. It also requires monitoring and the reference methods to be used.

(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 is not more stringent than the federal mandate.

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

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:170. Career Development Program.

RELATES TO: KRS 15.310
STATUTORY AUTHORITY: KRS 15.330(1)(c), (h)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council (KLEC) to establish and prescribe minimum standards and qualifications for voluntary and career development programs for certified peace officers and telecommunications. This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunications.

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

(2) "Conceptual skills course" means a course that emphasizes
planning, organization, goal setting abilities, [or] strategic orientation, or provides material related to higher order abstractions that force conceptual thinking.

(4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.

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

(6) "Manager" means a position within law enforcement or telecommunications:
   (a) Between the executive and supervisor positions; and
   (b) Which is responsible for the supervision of supervisory employees and may involve the planning, organization, public relations, discipline, or general administrative work.

(7) "Supervisor" means a position which:
   (a) Is responsible for the direct supervision of nonsupervisory personnel; and
   (b) May also perform line duties in law enforcement or telecommunications.

(8) "Technical skills course" means a course relating to operational or technical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or telecommunications course shall be categorized as:

(a) Conceptual skills course; or
(b) Human skills course; or
(c) Technical skills course.

(2) When a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.

(3) A law enforcement or telecommunications course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or telecommunicator who wishes to apply for a particular career step certificate shall:

(1) Complete a "CDP-1 Participant Commitment Form", which shall include the following:
   (a) Applicant's name and agency;
   (b) Social Security number and date of birth;
   (c) The program to which the applicant wishes to commit;
   (d) Signature of the applicant; and
   (e) Signature of the applicant's agency head.

(2) Submit one (1) of the following application forms for the specific career development step for which the participant wishes to apply:
   (a) Intermediate Law Enforcement Officer;
   (b) Advanced Law Enforcement Officer;
   (c) Law enforcement Officer Investigator;
   (d) Law Enforcement Traffic Officer;
   (e) Advanced Deputy Sheriff;
   (f) Law Enforcement Supervisor/Superintendents;
   (g) Law Enforcement Manager;
   (h) Law Enforcement Executive;
   (i) Basic Telecommunicator [Certificate];
   (j) Intermediate Telecommunicator;
   (k) Advanced Telecommunicator;
   (l) Telecommunications Manager/Director; or
   (m) Law Enforcement Training Officer;
   (n) Law Enforcement Chief Executive;
   (o) Law Enforcement Officer Advanced Investigator; or
   (p) Crime Scene Processing Officer.

(3) Include the following information on the application form:
   (a) Applicant's name and agency;
   (b) Social Security number and date of birth;
   (c) Data of employment with current agency;
   (d) Current rank or title and date of promotion to that position; and
   (e) Employment history;
   (f) Training history;
   (g) Educational history;
   (h) Signature of program applicant; and
   (i) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and

(4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed required:
   (a) KLEC-approved or recognized courses; and
   (b) College courses.

Section 4. In-service Training, College, Out-of-State Work Experience. Retroactive Credit. (1) All in-service training applied toward a career development step shall be approved or recognized by the KLEC.

(2) A program participant shall not receive more than one (1) program credit for an in-service training course.

(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply for a career development step toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
   (a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development;
   (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council for Postsecondary Education:
   (a) Two (2) years of experience and a bachelor's degree;
   (b) Four (4) years of experience and an associate's degree;
   (c) Four (4) years of experience and ninety-five (95) hours of college credit;
   (d) Five (5) years of experience and eighty (80) hours of college credit;
   (e) Six (6) years of experience and sixty-five (65) hours of college credit;
   (f) Seven (7) years of experience and fifty (50) hours of college credit; or
   (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
   (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
   (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
   (c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council for Postsecondary Education:

- 1269 -
Education:
(a) Four (4) years of experience and a master's degree;
(b) Six (6) years of experience and a bachelor's degree;
(c) Nine (9) years of experience and an associate's degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.366(2);
(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:
   (a) Forty (40) hours of technical skills development courses;
   (b) Forty (40) hours of conceptual skills development courses; and
   (c) Eighty (80) hours in one (1) of the following options of courses:
      1. Academy of Police Supervision;
      2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or
      3. A KLEC-approved or recognized equivalent course; and
   (3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Two (2) years of experience and a master's degree;
      (b) Four (4) years of experience and a bachelor's degree;
      (c) Six (6) years of experience and an associate's degree;
      (d) Six (6) years of experience and ninety-five (95) hours of college credit;
      (e) Seven (7) years of experience and eighty (80) hours of college credit;
      (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
      (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Manager Certificate. To demonstrate proficiency in the Law Enforcement Manager Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.366(2);
(2) Complete the:
   (a) Department of Criminal Justice Training Criminal Justice Executive Development Course;
   (b) Department of Criminal Justice Training School for Strategic Leadership;
   (c) Federal Bureau of Investigation (FBI) National Academy;
   (d) University of Louisville Southern Police Institute Administrative Officers Course;
   (e) Northwestern University School of Police Staff and Command;
   (f) Police Executive Leadership College; or
   (g) Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
   (3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Two (2) years of experience and a master's degree;
      (b) Four (4) years of experience and a bachelor's degree;
      (c) Six (6) years of experience and an associate's degree;
      (d) Six (6) years of experience and ninety-five (95) hours of college credit;
      (e) Seven (7) years of experience and eighty (80) hours of college credit;
      (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
      (g) Nine (9) years of experience and fifty (50) hours of college credit.
(c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   1. Two (2) years of experience and a bachelor's degree;
   2. Three (3) years of experience and sixty (60) hours of college credit;
   or
   3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

   (1) Have active peace officer certification in accordance with KRS 15.386(2);
   (2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:
      (a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and
      (b) 120 training hours in investigative courses identified by the KLEC; and
   (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Four (4) years of experience and a master's degree;
      (b) Six (6) years of experience and a bachelor's degree;
      (c) Nine (9) years of experience and an associate's degree;
      (d) Eight (8) years of experience and 110 hours of college credit;
      (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
      (f) Ten (10) years of experience and eighty (80) hours of college credit;
      (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
      (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

   (1) Have active peace officer certification in accordance with KRS 15.386(2);
   (2) Complete 200 hours of in-service training, consisting of:
      (a) Eighty (80) hour basic accident investigation course or a KLEC-approved equivalent; and
      (b) 120 training hours in traffic courses identified by the KLEC; and
   (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Four (4) years of experience and a master's degree;
      (b) Six (6) years of experience and a bachelor's degree;
      (c) Nine (9) years of experience and an associate's degree;
      (d) Eight (8) years of experience and 110 hours of college credit;
      (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
      (f) Ten (10) years of experience and eighty (80) hours of college credit;
      (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
      (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:

   (1) Have active peace officer certification in accordance with KRS 15.386(2);
   (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
      (a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;
      (b) Forty (40) hours shall be in technical skills development; and
      (c) Forty (40) hours shall be in human skills development; and
   (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Two (2) years of experience and a bachelor's degree;
      (b) Four (4) years of experience and an associate's degree;
      (c) Four (4) years of experience and ninety-five (95) hours of college credit;
      (d) Five (5) years of experience and eighty (80) hours of college credit;
      (e) Six (6) years of experience and sixty-five (65) hours of college credit;
      (f) Seven (7) years of experience and fifty (50) hours of college credit; or
      (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall successfully complete the following courses:

   (1) Twenty-four (24) hours of emergency medical dispatch;
   (2) Forty (40) hours of basic telecommunications;
   (3) Eight (8) hours of Crisis Negotiation;
   (4) Eight (8) hours of family violence;
   (5) Spanish for the Telecommunicator; and
   (6) Incident command.

Section 15. Intermediate Telecommunicator Certificate. To demonstrate proficiency in the Intermediate Telecommunications Career Step, a person shall:

   (1) Complete the Basic Telecommunications Career Step;
   (2) Complete the following courses:
      (a) Eight (8) hours of customer service;
      (b) Eight (8) hours of Developing High-performance Teams;
      (c) Sixteen (16) hours of cultural awareness; and
      (d) Sixteen (16) hours of advanced emergency medical dispatch; and
   (3) Have one (1) of the following combinations of full-time telecommunication experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Three (3) years of experience and thirty (30) hours of college credit;
      (b) Four (4) years of experience and twenty-five (25) hours of college credit;
      (c) Five (5) years of experience and twenty (20) hours of college credit;
      (d) Six (6) years of experience and fifteen (15) hours of college credit;
      (e) Seven (7) years of experience and ten (10) hours of college credit; or
      (f) Eight (8) hours of experience and five (5) hours of college credit.

Section 16. Advanced Telecommunicator Certificate. To demonstrate proficiency in the Advanced Telecommunications Career Step, a person shall:

   (1) Complete the Intermediate Telecommunications Career Step;
   (2) Complete the following courses:
      (a) Forty (40) hours of communications training officer; and
      (b) An eight (8) hours KLEC-approved telecommunications ethics course;
   (3) Complete eight (8) hours of elective courses from any telecommunications course approved by the KLEC; and
Section 17. Telecommunications Supervisor Certificate. To demonstrate proficiency in the Telecommunications Supervisor Career Step, a person shall:
1. Complete the Basic Telecommunications Career Step;
2. Successfully complete:
   (a) The forty (40) hour Telecommunications Supervisor Basic course; and
   (b) Sixteen (16) hours of supervision training approved by the KLEC; and
3. Have one (1) of the following combinations of full-time telecommunications experience in a supervisory position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Two (2) years of experience and an associate’s degree;
   (b) Three (3) years of experience and fifty-five (55) hours of college credit;
   (c) Four (4) years of experience and fifty (50) hours of college credit;
   (d) Five (5) years of experience and forty-five (45) hours of college credit;
   (e) Six (6) years of experience and forty (40) hours of college credit;
   (f) Seven (7) years of experience and thirty-five (35) hours of college credit; or
   (g) Eight (8) years of experience and thirty (30) hours of college credit.

Section 18. Telecommunications Director/Manager Certificate. To demonstrate proficiency in the Telecommunications Director/Manager Career Step, a person shall:
1. Obtain the Telecommunications Supervisor Certificate;
2. Successfully complete:
   (a) The forty (40) hour Telecommunications Executive Development[telecommunications-managed] course; and
   (b) Forty (40) hours of elective supervisory or management courses approved by the KLEC; and
3. Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Two (2) years of experience and a bachelor’s degree;
   (b) Four (4) years of experience and an associate’s degree;
   (c) Five (5) years of experience and sixty (60) hours of college credit;
   (d) Six (6) years of experience and fifty-five (55) hours of college credit;
   (e) Seven (7) years of experience and fifty (50) hours of college credit;
   (f) Eight (8) years of experience and forty-five (45) hours of college credit;
   (g) Nine (9) years of experience and forty (40) hours of college credit; or
   (h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 19. Law Enforcement Training Officer. To demonstrate proficiency in the Law Enforcement Training Officer Career Step, a peace officer shall have:
1. Active peace officer certification in accordance with KRS 15.388(2);
2. Have successfully completed the following:
   (a) Intermediate Law Enforcement Officer Certificate;
   (b) Advanced Law Enforcement Officer Certificate;
   (c) 120 hours of in-service training, which shall include:
      1. Police Training Officer course;
      2. Field Instructor course; and
      3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and
3. One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Four (4) years of experience and a master’s degree;
   (b) Six (6) years of experience and a bachelor’s degree;
   (c) Nine (9) years of experience and an associate’s degree;
   (d) Eight (8) years of experience and 110 hours of college credit;
   (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
   (f) Ten (10) years of experience and eighty (80) hours of college credit;
   (g) Eleven (11) years of experience and sixty-five (65) hours of college credit or
   (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 20. Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:
1. Active peace officer certification in accordance with KRS 15.388(2);
2. Successfully completed the following:
   (a) Law Enforcement Officer Investigator Certificate;
   (b) 160 hours of electives in investigations courses approved or recognized by the Kentucky Law Enforcement Council; and
3. One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Four (4) years of experience and a master’s degree;
   (b) Six (6) years of experience and a bachelor’s degree;
   (c) Nine (9) years of experience and an associate’s degree;
   (d) Eight (8) years of experience and 110 hours of college credit;
   (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
   (f) Ten (10) years of experience and eighty (80) hours of college credit;
   (g) Eleven (11) years of experience and sixty-five (65) hours of college credit or
   (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 21. Crime Scene Processing. To demonstrate proficiency in the Crime Scene Processing Officer Career Step, a peace officer shall have:
1. Active peace officer certification in accordance with KRS 15.388(2);
2. Successfully completed:
   (a) 200 hours of in-service training, which shall include:
      1. Crime Scene Investigations;
      2. Digital Photography; and
      3. Advanced Latent Fingerprints; and
   (b) One (1) of the following:
      1. Eighty (80) hours of electives in investigations courses offered by the Department of Criminal Justice Training; or
      2. The Kentucky Criminalistics Academy or the National Forensics Academy; and
3. One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Four (4) years of experience and a master’s degree;
   (b) Five (5) years of experience and an associate’s degree;
   (c) Ten (10) years of experience; and
   (d) Fifty (50) hours of college credit.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

Education:
(a) Four (4) years of experience and a master’s degree;
(b) Six (6) years of experience and a bachelor’s degree;
(c) Nine (9) years of experience and an associate’s degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 22, Certificate of Completion. The KLEC shall issue a certificate to a peace officer or telecommunicator upon completion of a career development step.

Section 23[20] Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 24[24] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Career Development Program Participant Commitment Form", KLEC Form CDP-1, (August 2006 edition);
(b) "Intermediate Law Enforcement Officer", KLEC Form CDP-2, (August 2006 edition);
(c) "Advanced Law Enforcement Officer", KLEC Form CDP-3, (August 2006 edition);
(d) "Law Enforcement Officer Investigator", KLEC Form CDP-4, (August 2006 edition);
(e) "Law Enforcement Traffic Officer", KLEC Form CDP-5, (August 2006 edition);
(f) "Advanced Deputy Sheriff", KLEC Form CDP-6, (August 2006 edition);
(g) "Law Enforcement Supervisor", KLEC Form CDP-7, (August 2006 edition);
(h) "Law Enforcement Manager ", KLEC Form CDP-8, (August 2006 edition);
(i) "Law Enforcement Executive", KLEC Form CDP-9, (August 2006 edition);
(j) "Basic Telecommunicator", KLEC Form CDP-10, (August 2006 edition);
(k) "Intermediate Telecommunicator", KLEC Form CDP-11, (August 2006 edition);
(l) "Advanced Telecommunicator", KLEC Form CDP-12, (August 2006 edition);
(m) "Telecommunications Supervisor", KLEC Form CDP-13, (August 2006 edition);
(n) "Telecommunications Director/Manager", KLEC Form CDP-14, (August 2006 edition); and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY BALL, Executive Director
For WILLIAM WALSH, Chair
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 14, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2008 at 9 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 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 December 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073, fax (859) 622-9027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the Kentucky Law Enforcement Council Career Development Program.
(b) The necessity of this administrative regulation: KRS 15.330(1)(d) authorizes the establishment of volunteer career development programs for peace officers and telecommunicators. The administrative regulation is necessary to set out the requirements of participating in and completing the program.
(c) How this administrative regulation conforms to the content of the enabling statutes: This administrative regulation complies with the requirements of KRS 15.330(1)(d), which authorizes the establishment of voluntary career development programs by the Kentucky Law Enforcement Council.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunicators. The administrative regulation establishes the requirements of the career development program in compliance with KRS 15 330(1)(d).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will add additional courses that may be applied toward participation in the career development program.
(b) The necessity of the amendment to this administrative regulation: To add additional courses for eligibility.
(c) How the amendment conforms to the content of the enabling statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunicators by the Kentucky Law Enforcement Council, and this amendment assists in the effective administration of the statutes: The amendment will expand the list of courses that may be applied for credit toward the career development program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although this program is voluntary and not all will participate, this administrative regulation could benefit all law enforcement and telecommunicators personnel in the Commonwealth, which is approximately 8,000 in number.
(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 three new certificates which can be earned, as well as additional courses for which they can be given credit in the CDP program.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendment should not cost anything. Participation is voluntary and free of charge.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have three additional specialties for which they can be given credit and additional courses for which they can be granted credit.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There should not be any new costs above that
currently incurred to administer the Career Development Program,
which was originally implemented in 2003.
(b) On a continuing basis: None
(c) What is the source of funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
restricted Kentucky Law Enforcement Foundation Program Fund
(KLEPF).
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change, if it is an amendment: No
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? No. Tiering was not appropri-
ate in this administrative regulation because the administrative
regulation applies equally to all those individuals or entities regu-
lated 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. Con-
stitution may be implicated as well as Sections 2 and 3 of the Ken-
tucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? For those who
choose to participate, this administrative regulation will affect
city and county police departments, fire departments, and
communicators. This administrative regulation is intended to provide
a means by which local law enforcement officers and communicators
can work toward a "career track" in their specialized field of
law enforcement.
3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulation. KRS 15:330(1)(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 gener-
ate 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 gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first
year? The program was originally implemented in 2003 and cost approximately $2,000
(d) How much will it cost to administer this program for subse-
quent years? Approximately $1,000-$1,500.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Emergency Amendment)

601 KAR 1:040. Application for operating authority and
registration of motor carriers.
RELATES TO: KRS (Chapter 286) 281.014, 281.610, 281.615,
281.618, 281.619, 281.620, 281.625, 281.637, 281.650, 281.650,
281A.010(8), 49 C.F.R. Part 367, 49 U.S.C. 14504a
STATUTORY AUTHORITY: KRS 281.600(1), 281.620(1),
281.752(49 C.F.R. Part 367), 49 U.S.C. 14501
NECESSITY, FUNCTION, AND CONFORMITY: KRS
281.600(1) authorizes the Transportation Cabinet to regulate motor
carriers. This administrative regulation establishes the application
procedure for interstate operating authority in the Commonwealth and the registration
procedure for interstate motor carriers operating in Kentucky pursuant to authority granted by
the United States Department of Transportation.

Section 1. Kentucky Intrastate Passenger or Household Goods
Authority. (1)(a) An application for operating authority to engage in
Kentucky intrastate commerce relating to the transportation of
persons except for charter bus transportation or household
goods shall be made on the following forms:
1. Transportation Cabinet form TC 93-10E, Application for
Operating Authority, Household Goods,[revised April 1999];
2. Transportation Cabinet form TC 93-11E, Application for
Operating Authority, Disabled Persons Carrier,[revised April 1999];
3. Transportation Cabinet form TC 93-12E, Application for
Operating Authority, Bus and Airport Shuttle,[revised April 1999];
4. Transportation Cabinet form TC 93-13E, Application for
Operating Authority, City Limousine and, Taxicab,[revised
April 1999]; or
5. Transportation Cabinet form TC 93-15E, Application for
Operating Authority, County Limousine and, Taxicab,[revised
April 1999].
(b) The application shall be accompanied by a filing fee of
twenty-five (25) dollars.
(c) All applications and exhibits shall be filed with answers
typewritten or printed legibly in ink. Each question shall be fully
answered and all instructions with the application shall be read and
fully complied with.
(2)(a) If the applicant is a corporation, a copy of the corpora-
tion's certificate of good standing from the Secretary of State in the
jurisdiction in which it was incorporated shall be submitted with the
application.
(b) This certification shall not be more than thirty (30) days old
when the application is submitted to the Transportation Cabinet.
(c) If the applicant is a foreign corporation, a Kentucky process
agent shall be listed.
(3) The application shall be accompanied by the applicant's
financial statement prepared in accordance with 601 KAR 2:010.
(4)(a) An application shall be sworn to by the applicant or a
responsible official acting for the applicant.
(b) A hearing shall not be called or authority issued upon an
incomplete application.

Section 2. Temporary Authority Applications. (1)(a) An applica-
tion for temporary authority shall be made to the Transportation
Cabinet by petition.
(b) The petition shall set forth the facts relied on by the appli-
cant as showing an immediate and urgent need for the authority
sought.
(c) All existing carriers having authority to perform the
proposed service between any of the points sought in the petition shall
be fully identified and the authority of each as affected by the
application shall be stated.
(d) The applicant shall have the burden of proof in showing
that any existing carriers with authority are not capable of meeting
the need for service.
2. In lieu of meeting this burden, the applicant may file a waiver
from each carrier authorized to serve the area sought or any part
thereof in the form of a letter from each carrier waiving any objection
to the temporary grant of authority.
(2) There shall also be filed with the petition a verified state-
ment. The supporting statement shall contain at least the following
information:
(a) Name and address of the motor carrier who has filed the
application for temporary authority;
(b) Statement of character and reputation of the applicant and
a brief history of the applicant's work history, including any expe-
ference in providing transportation services;
(c) Name, address and interest of each person filing a supporting affidavit;
(d) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;
(e) A statement of when the transportation service is needed and the reasons why the need is immediate and urgent;
(f) An estimate of how long the need for the transportation service will continue and a statement that the person making the supporting statement would support a permanent service application;
(g) A statement of the consequences if this transportation service is not made available; and
(h) A statement of incidents where efforts have been made to obtain the service from existing motor carriers and the;
1. Date[s][date]s and results of these efforts,
2. Name[s][name] and address of all existing carriers who have either failed or refused to provide the service; and
3. Reason[s][the-reasons] given for the failure or refusal.
(3) The department may issue temporary authority without following any of the requirements listed in subsection (2) of this section[above] if one (1) of the following conditions exists:
(a) There are no existing carriers with authority within the scope and area of the application;
(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;
(c) There are unusual and emergency conditions; or
(d) The application is for temporary approval under KRS 281.632(2).
(4) If no application for corresponding permanent authority is made, an application for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2.010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1)(a) An application for approval to transfer a certificate or permit issued by the Transportation Cabinet authorizing Kentucky interstate commerce shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2.010.
(b) The application shall be made on "Application for Approval of Transfer of Certificate or Permit", form TC 93-17E[-effective April 1967].
(c) All applications and exhibits shall be filed with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.
(2)(a) [When] the applicant is a corporation, a copy of the corporation’s certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certificate shall not be more than thirty (30) days old when[the-time] the application is submitted to the department.
(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.
(3)(a) The application shall be accompanied by the transferee’s financial statement prepared in accordance with 601 KAR 2.010.
(b) An application shall be sworn to by the applicant or a responsible official acting for the applicant.
(c) A hearing shall not be called or authority issued upon an incomplete application.
(d) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.
(e) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

Section 4. Interstate Operating Authority - [For-hire] Motor Carriers. (1) 49 U.S.C. 14504a, the Unified Carrier Registration Act of 2005[49 C.F.R. Part 367 revised October 1, 2004.] shall govern the registration of [the-for-hire] motor carriers which meet the following criteria:
(a) Those whose principal place of business is Kentucky; or
(b) Those which are operating in Interstate commerce.
(2) The Unified Carrier Registration Agreement (UCRA)-"Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Registration in the registration of [for-hire] motor carriers operating in Interstate commerce.
(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Registration for registration pursuant to 49 C.F.R. Part 367.
(4) The [Kentucky]fee for the issuance of the registration[registration/permit] required under the UCRA shall be the fee established in 49 C.F.R. Part 367.20 by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

Section 5. [Contract Bus Carrier Permit, Intrastate—(1) Each application for authority as an intrastate contract bus carrier shall include two (2) copies of the contract under which the applicant desires to operate.
(2) The contracts shall be executed by both the applicant/buyer and the seller or applicant and passenger, and shall set out:
(a) Rents applicable;
(b) The extent and scope of the activity covered by the contract; and
(c) The minimum number of persons to be transported. The evidence of a published common carrier’s certificate for bus transportation shall be acceptable in defining rates or compensation.
(d) At least one (1) of the contract copies shall have original signatures.
(e) The extent of the authority of the contract carrier’s permit shall be:
(a) Limited to the scope of the contract on file with the department, and
(b) Made a part of the permit.
(5) If the motor carrier has complied with the provisions of the administrative regulations, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.
(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to the authority.

Section 6. Charter Bus Applications. (1) An application for operating authority as a charter bus operator pursuant to KRS 281.637 shall be made on form TC 95-205E[93-20] "Application for Charter Bus Operating Authority".
(2) In accordance with KRS 281A.010(8)(d), a charter bus shall be considered to be a commercial motor vehicle as defined by KRS 281A.010(8) except that it shall be designed to transport nineteen (17) or more persons, including the driver.
(3) Each application shall include a filing fee of twenty-five (25) dollars.
(4) The applicant shall certify knowledge of and compliance with 601 KAR 1:005, Sections 2, 3(1)(b) and 4 with the provisions of KRS Chapter 281A relating to commercial drivers licenses.
(5) The applicant shall be required to file evidence of insurance as required by KRS 281.635(4).
(6)(a) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.
(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form TC 93-10E, "Application for Operating Authority, Household Goods", July 2006[revised April 1990];
(b) Form TC 93-11E, "Application for Operating Authority, Disabled Persons Carrier", July 2005[revised April 1998];
(c) Form TC 93-12E, "Application for Operating Authority, Bus
and Airport Shuttle", July 2005[revised April 1999];
(d) Form TC 93-13E, "Application for Operating Authority, City Limousine and Taxi", July 2006[revised April 1999];
(e) Form TC 93-15E, "Application for Operating Authority, County Limousine and Taxi", July 2006[revised April 1999];
(f) Form TC93-17E, "Application for Approval of Transfer or Lease of Certificate or Permit", July 2006[Application for Charter Bus Operating Authority", form TC 93-29, revised December 2001];
(h) "Unified Carrier Registration Agreement", approved by the United Carrier Registration Board, June 11, 2007[49 C.F.R. Part 367, revised October 1, 2001, presumes standards for registration with states].

(2) The material in subsection (1) may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, 200 Mero Street[Office of General Counsel, Hearing Section, State Office Building, 601 East High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

(3) The material incorporated in subsection (1) and (2) of this section may be inspected, copied or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Third Floor of the State Office Building, 601 East High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

JOSEPH PRATHER, SECRETARY
APPROVED BY AGENCY: September 15, 2008
FILED WITH LRC: September 22, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 25, 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 the agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five working days prior to the hearing of the submission of comments on the proposed administrative regulation by close of business December 1, 2008 to:

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana C. Fugazzi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides the procedures for making initial and renewal applications to the Cabinet pursuant to various provisions of KRS Chapter 231 for authority to operate various forms of transportation of goods or persons.
(b) The necessity of this administrative regulation: The procedural steps are not provided elsewhere.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 231 requires motor carriers to obtain authority to operate. KRS 281.600 provides broad authority for the Transportation Cabinet to regulate these operators. KRS 281.610 provides authority to the Department of Vehicle Regulation to regulate interstate commerce under the authority of and in accordance with the provisions of any Act of Congress.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently provides procedural guidelines for the application and renewal process and sets forth requirements for each type of operating authority.

(2) If this is an amendment of an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The Interstate Operating Authority will be amended to include 49 U.S.C. 14504a, the Unified Carrier Registration Act of 2005. The amendment also updates material incorporated by reference.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the Cabinet's ability to administer and enforce the Unified Carrier Registration Act.
(c) How this amendment conforms to the content of the authorizing statutes: The Unified Carrier Registration Act of 2005 is an Act of Congress relating to interstate commerce. KRS 281.610 allows the Transportation Cabinet to regulate such commerce under the authority of and in accordance with the provisions of any Act of Congress vesting in or delegating to the commissioner such authority as an agency of the United States government.
(d) How the amendment will assist in the effective administration of the statutes: By adopting the Unified Carrier Registration Agreement the Cabinet will have the guidelines in place to properly administer this federal and state program. Further, this will enable Kentucky Vehicle Enforcement the ability to properly enforce the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky has approximately 14,000 commercial motor carriers that will need to register under this 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 the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All commercial carriers will have to complete an application in an electronic format or by paper and submit the required fees as established by the Unified Carrier Board of Directors. This application and fee process replaces the Single State Registration System.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Interstate commercial motor vehicles owned or operated within the twelve month period ending June 30 of the year immediately prior to the year for which Uniform Carrier Registration is made will need to pay based upon the current fee chart of $2-$39.00, 35-$115.00, 6-20=$239.00, 21-100=$806.00, 101-1000=$3,840.00, 1001-more=$37,500.00. Fees may be charged and mandated from the UCR Board on an annual basis.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All of the motor carrier industry will pay fees rather than only the for-hire motor carriers as required under the Single State Registration System that the Unified Carrier Registration Act replaced.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Additional postage expense will occur since the Single State Registration System only applied to 3,500 Kentucky carriers and the Unified Carrier Registration Act will apply to over 14,000. The postage expense will occur on the annual renewal notice and mailing back the receipt. Other additional expenses are unknown at this time.
(b) On a continuing basis: Ongoing postage expense.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal fund monies are used for administration and enforcement of these programs.
(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: None anticipated.
(e) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: This regulation adopts the Unified Carrier Registration Agreement which contains fees as identified in question 4(b).

(9) **TIERING:** is tiering applied? Yes, there is tiering in the regulatory scheme with varying requirements for the different types of operating authority.

**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. Estimates 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:

**EDUCATION CABINET**

Kentucky Board of Education
Department of Education
(Admission)

703 KAR 5:140. Requirements for school and district report cards.

**RELATES TO:** KRS 156.6453(13)
**STATUTORY AUTHORITY.** KRS 156.6453(13)
**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 156.6453(12)(9)

KRS 156.6453(12)(9) requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance. This administrative regulation establishes the standards for a school and district report card.

Section 1. Definitions. (1) “Average student/teacher ratio” means the total enrollment of the school (end of year membership) divided by the number of teachers on a full-time equivalent (FTE) basis, not including administrators, guidance counselors, or media specialists.

(2) “Average years of experience” means the average number of years of professional experience of classroom teachers excluding certified staff such as administrators, guidance counselors, or media specialists.

(3) “Base year” means the academic year immediately preceding the publication of the school report card components.

(4) “Content-focused professional development” means professional development that is teacher focused, discipline-based and content grounded, and provides teachers with in-depth learning experiences in the chosen core discipline.

(5) “Core academic subject” means English, reading or lan-

**5. “District report card (base)” means the summary of district and school information that may be required to be published in the newspaper with the largest paid circulation in the county in which the district resides. (6) “District report card (expanded)” means the compilation-of-information, including the district report card (base) and other information as required in Section 5 of this administrative regulation, including the disaggregated data elements, available for viewing in the district central office upon request by parents and public.

(7) “School” means an institution as defined in KRS 160.345(11b)A1 school as defined in 703 KAR 5:040, Section 4(1). (8) “School report card (base)” means the [printed] compilation of school information to be published on the Kentucky Department of Education Web site and linked to school Web sites or in a printed copy if requested.

(9) “Every school” by every parent or guardian with a child or children in a school.

(10) “School report card (expanded)” means the compilation of information, including the school report card (base) and other information as required in Section 3 of this administrative regulation, including the disaggregated data elements, available for viewing in the main office of each school upon request of parents and public.

(11) “School safety data” means a list of components as established in Section 2 of this administrative regulation, critical to providing for a safe school environment for students and school staff.

(12) "Spending per student - district" means the current (total) expenditures made divided by the total primary through grade twelve (12) end of year average daily attendance in the district.

(13) "Spending per student - school" means the current (total) expenditures made divided by the end-of-year average daily attendance in the school (set of instructional expenditures calculated in “Calculation Procedures for Data Included in the School Report Card” incorporated by reference in Section 9 of this administrative regulation common to all schools divided by the total end-of-year average daily attendance of the school).

(14) "Spending per student - state" means the current (total) expenditures made divided by the total primary through grade twelve (12) end of year average daily attendance in the state.

(15) "Total enrollment" means the number of primary through grade twelve (12) students enrolled in a school or district as reported by the local superintendent at the close of the year.

**Section 2. School Report Card (Base).** (1) A school report shall be published on the Kentucky Department of Education Web site and linked to school Web sites. The school report card shall be printed by the school upon request (base) shall be sent to the parents or guardians of each student in a school by United States mail, unless a waiver is granted by the Department of Education for a proposal that is equally effective in notifying parents or guardians of the contents of the school's report card. The parent or guardian has more than one (1) child in the same school, only (1) report card may be sent to the family.

(2) A school report card shall include the following information:
   (a) The name and address of the school, the name of its principal, and telephone, fax and e-mail contact information, all of which shall be current;
   (b) The total enrollment of the school;
   (c) The school level results of all components of the Commonwealth Accountability Testing System;
   (d) The school level results of state-sanctioned performing arts competitions or other state-sanctioned academic or speech competition, if applicable;
   (e) Teacher qualification information, including:
      (1) The percent of classes taught by teachers with a major, minor, or the equivalent in the subject being taught (i.e., certified via an alternative route), having an endorsement in the area being taught, middle school areas of concentration for middle school certification, passing the relevant PRAXIS II content test, or other
assessments stipulated by the Education Professional Standards Board;
2. The percent of classes taught by teachers participating in content-focused professional development related to the content being taught during the base year;
2.5. The percent of teachers with a masters degree or greater or the equivalent; and
4. Average years of teaching experience;
3. Percentage of teachers with emergency or provisional certification;
4. Percentage of core academic subject classes not taught by highly qualified teachers;
5. The number of teachers certified by the National Board for Professional Standards, and
6. the professional qualifications of all teachers expressed as percentages, including bachelor's, masters, rank I, specialist, and PhD or EdD;
(f) School safety data including:
1. Whether visitors are required to sign in;
2. Whether all parents receive the district discipline code;
3. What procedures are in place for drug and weapons detection;
4. The percentage of classrooms with telephones able to access outside lines; and
5. Data detailing safety violations of aggravated assault (with intent to cause injury), drug abuse, and weapons. The safety data shall include:
   a. The number of incidents; and
   b. The number of students suspended or expelled for that kind of incident;
(g) Student resource data including:
1. Spending per student at the school, district and state level;
2. Average student to teacher ratio at the school, district, and state level;
3. Student to Internet connected instructional computer ratios at the school, district and state level;
4. Percentage of computers five (5) years old or less and
5. Description of integration of technology into instruction;
(h) Parent involvement information including:
1. Number of students whose parent or guardian had at least one (1) teacher conference;
2. Number of parents and guardians voting in school council elections;
3. Number of parents and guardians serving on the school council or its committees; and
4. Number of school-related volunteer hours;
(i) A narrative describing to the public actions being taken to address issues in equity related to the delivery of educational services to all students; and
(j) The names of members of the current year school council with contact information, including telephone numbers or e-mail addresses where the members can be reached for questions or comments.
(k) Hyperlink to the current Consolidated School Improvement Plan (CSIP) if on the school website or the CSIP available for examination in school.

Section 3. As accurate, reliable data become available from student information systems, the Kentucky Department of Education shall link school, district, and state data to the school and district report cards, including existing reports, participation, and performance in advanced placement courses, the issuance of Commonwealth diplomas, participation in gifted and talented programs and participation in special education with instructional and testing accommodations, all disaggregated to the extent permitted under KRS 160.750-160.730, which protects the confidentiality of an individual student's educational records. [School Report Card (Expanded)]

Section 4. District Report Card ([Base]). (1) A district report card shall include a district level summary of all school data required on the school report card ([Base]) and shall be the aggregate of the school report cards by grade level.
(2) This card shall be published in the newspaper with the largest circulation in the county by the date specified in Section 6 of this administrative regulation. The [base] district report card shall include a narrative describing to the public actions being taken to address issues in equity related to the delivery of educational services to all students.
(3) The district report card ([base]) shall also include the names and appropriate addresses of the district superintendent and members of the local board of education.
(4) The district report card shall contain the Adequate Yearly Progress (AYP) status of all district schools and the percentage of core academic subject classes not taught by highly qualified teachers aggregated and disaggregated by high poverty compared to low poverty schools (schools in the top quartile of poverty and the bottom quartile of poverty in the state).
(5) The district report card shall be linked to the District Consolidated Improvement Plan and other Web-based reports detailing district academic performance when these reports become available.

Section 5. [District Report Card (Expanded)]. (1) A district report card (expanded) shall be available for viewing in the district central office no later than the date specified in Section 6 of this administrative regulation. Copies shall be made available at no charge or at a charge not to exceed cost, except for all data disaggregation pages which shall be supplied at no cost.
(2) A district report card (expanded) shall include:
(a) The data disaggregation pages of reports supplied by the Department of Education;
(b) Documentation of plans, policies, and procedures specified in KRS 163.440 for assuring students at risk of academic failure or of engaging in disruptive and disorderly behavior for the district;
(c) The number of students and the percentage of the student population participating in special education programs;
(d) The number of students and the percentage of the student population receiving instructional accommodations;
(e) The executive summary from the district consolidated plan;
(f) A listing of district average class sizes for core classes including mathematics, science, social studies and writing at all grade levels, and, if feasible, arts and humanities and practical living and vocational studies classes;
(g) A school district technology report. The district technology plan as required by KRS 157.615 and 157.665 and the district technology and the learning interface section from the consolidated planning comprehensive needs assessment and any technology related action items included in this plan may be used to fulfill this requirement;
(h) The number and percent of students enrolled for a fifth year in the primary program in the district; and
(i) Copies of all base school report cards.
(3) Upon the implementation of a statewide student data base, the following shall be included in the expanded district report card:
(a) At the high school level, a list of the advanced placement classes offered by the school, the total number of students enrolled in each advanced placement class, and the scores disaggregated by gender, race, and free and reduced lunch participation.
(b) At the high school level, an indication of whether a Commonwealth diploma is offered. If offered, the numbers of students earning the diploma shall be disaggregated by gender, race, and free and reduced lunch participation;
(c) At the high school level, a list of the advanced placement classes offered by the school, the total number of students enrolled in each advanced placement class, and the scores disaggregated by gender, race, and free and reduced lunch participation.
(d) At the high school level, a list of the advanced placement classes offered by the school, the total number of students enrolled in each advanced placement class, and the scores disaggregated by gender, race, and free and reduced lunch participation.
Section 6-2.2 Verification; Audits. The Department of Education shall conduct an audit of school and district report cards for compliance with the provisions of this administrative regulation. School and district report card components generated at the school and district shall be delivered to the Department of Education upon request.
Section 7-8. Noncompliance. (1) Noncompliance shall include:
(a) Failure to meet a publication deadline;
(b) Failure to mail school report cards (base) or to implement a Department of Education approved plan for distributing them;
(c) Reproduction of a card component or components;
(d) Unauthorized alteration of data[s] or [i] falsification of data;
(2) If a school or district fails to meet the timeline for publication of a component of the school report card, it shall communicate by letter to the Department of Education, identifying the component and indicating when the component was or will be communicated to the appropriate public;
(3) If a school or district fails to mail the school report card (base) to parents and guardians and does not have a waiver granted by the Department of Education for a proposal that is equally effective in notifying parents or guardians of the card and its contents, it shall determine which parents and guardians did not receive the report card and supply onto (1) to each of them;
(4) If a school or district refuses to produce a required component of the school report card, the matter shall be referred to the Office of Communications investigation and make recommendations to the Commissioner of Education.
(5) If a school or district alters data supplied by the department without authorization from the department, it shall supply documentation to the department demonstrating the accuracy of its changes. If the documentation cannot be produced or does not support the alterations made, the matter shall be treated as the publication of incorrect data in paragraph (c) of this subsection;
(6) If a school or district publishes incorrect information in a component of the report card, it shall supply corrected information to the audience that received the incorrect information, using the same medium by which it conveyed the original information. If there is reason to believe that the data error was intentional, the matter shall be referred to the Office of Communications to investigate and make recommendations to the Commissioner of Education.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Accountability and Accountability, 18th Floor, Capital Plaza Tower, 600 Mer St., Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed
and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 158.6453(13).

Chairman: JON E. DRAUD, Commissioner
JOSIE, BROTHERS, Chairperson
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 15, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 24, 2008 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify the 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 December 1, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the schools and districts, with the support of the Agency, during the annual development of required school and district report cards.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6453(13) and the federal No Child Left Behind (NCLB) Act which require local educational agencies to produce and make available school and district report cards to parents and communities.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides guidance for the use of the report cards. A result of the report cards, the timing of their dissemination and the means for ensuring that the information in the report cards is available to Kentucky parents and communities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the content to be included in the cards, the method and timing of the production of the cards and their availability to the public.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment changes the primary means of dissemination of report cards to parents. The existing cards are produced and mailed to the public and the content of KRS 158.6453(13) and the federal No Child Left Behind (NCLB) Act which require local educational agencies to produce and make available school and district report cards to parents and communities.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to speed the production of the school and district report cards annually and to enhance the availability of relevant information that may be linked to the school and district report cards. Also, the proposed amendment brings the card in full compliance with NCLB requirements.
(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the school and district report cards.
(d) How the amendment will assist in the effective administration of the statutes: Simplifying the production process of the school report cards will speed the process of collecting the information required for the report cards and the sharing of the data with the public. It will be easier to ensure the availability of the school report cards using the KDE Website than it is in relying on the delivery of hundreds of thousands of documents throughout the Commonwealth by bulk mail. Finally, Web placement will make possible the upgrading of school data as improved data become available as well as the linkage of the data required in the school report card with a variety of Web-based data sources that will make it much more convenient for parents to explore the types of information once available in the expanded report cards. The teacher quality data required by NCLB will be available months earlier than with the preceding regulation.
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact districts by speeding up the process of producing the school and district report cards, allowing parents and community to examine the data several months earlier than in the past. School and district employees will be spared the unnecessary task of physically producing the expanded report cards and storing them.
(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 are no additional actions required of school districts as a direct result of this amendment which will reduce workload.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the School Districts. Eliminating the centralized printing and mailing of the school report card will save the Commonwealth approximately $400,000 per year.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The proposed amendment will require some technical changes to the programming software, but these changes will be performed in the normal course of work and not incur any additional costs.
(b) On a continuing basis: The proposed amendment does not result in additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: the state General Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The Kentucky Board of Education will not require additional funding as a result of this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453(13) and No Child Left Behind Act.

4. Estimate the effect of this administrative regulation on the expenditures as 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 additional revenue generated by this administrative regulation. No additional costs are expected. The Commonwealth will save the costs of printing and mailing 600,000 report cards, approximately $400,000 per year.

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

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

EDUCATION CABINET
Kentucky Board of Education
Department of Education (Amendment)

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070, 158.6459
STATUTORY AUTHORITY: KRS 158.070, 158.070
NECESSITY, AND CONFORMITY: KRS 158.070(8) requires schools to provide continuing education [beyond the minimum school-term] for students who need additional instructional time to achieve the standards outlined in KRS 158.6451. KRS 158.070(8) of extended services and requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver these services during the regular school day. KRS 158.070(8) also requires the Kentucky Board of Education to establish criteria for waivers by which programs may be scheduled on a limited basis during the regular school day. This administrative regulation establishes requirements for extended school services, regardless of when during the school day or calendar they are delivered.

Section 1. Definitions. (1) "Diagnostic Assessment" which may also be called "formative or interim/benchmark assessment," means assessment that is used to identify gaps in student learning in specific content areas.

(2) "Extended school services" or "ESS" means instructional and support services provided:

(a) By school districts for students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or be able to meet the [need additional time to achieve] academic expectations in 703 KAR 4:060 without additional time or differentiated opportunity to learn; and

(b) at times separate from the regular school day, regular school week, or the minimum school term unless a district's request for a waiver meets the criteria established in Section 7 of this administrative regulation and has been approved by the Commissioner of Education;

(c) As interventions included in the student’s Intervention Plan, in grades through grade 5, or in the student’s Individual Learning Plan, in grades 6 through 12, to ensure that the student remains in school and is on track to meet goals for postsecondary education and career after high school.

(3) "Formative assessment" means the process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended learning outcomes.

(4) "Individual Learning Plan" means a plan to help students grades 6 through 12 better focus their coursework on individual goals as they prepare for postsecondary studies and careers.

(5) "Interim or benchmark assessments" means assessments that are administered at the school or district level at prescribed intervals and aimed at reflecting student instructional data.

(6) "Summative assessment" means tests given at the end of instruction to determine what was learned.

(7) "Support services" means noninstructional components of a program that:

(a) Are provided to enable the student to realize the benefits of the instructional program; and

(b) May include transportation, instructional materials or supplies, parent-teacher conferences, community-based mentoring, academic advising, parent training for follow through, or referrals for social, health or financial assistance through appropriate service agencies.

Section 2. Instructional Program. (1) The major emphasis of extended school services shall be to provide additional time and differentiated opportunity to learn in which rigorous academic and enrichment content are aligned with individual student needs to improve:

(a) To enhance the present level of performance of students who are having difficulty in one (1) or more content areas, Priority for ESS services shall be placed on designing and delivering services to students at academic risk with specific objective that students are able to:

(a) Progress from grade to grade with their cohort.

(b) Exit elementary school ready to meet academic expectations at the middle school level;

(c) Exit middle school ready to meet academic expectations at the high school level; and

(d) Exit high school ready to meet academic expectations at postsecondary education and the workplace, with particular emphasis on literacy and mathematics. (To provide an extended program for students who have been retained or who are at risk of being retained in a class or grade or of failing to graduate on time or dropping out without additional assistance; and

(c) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age ranges.)

(2) The extended school services provided to a student shall be planned, documented and evaluated through the intervention plan, at primary through grade 5, or in the student’s Individual Learning Plan, in grades 6 through 12. The instructional program for extended school services shall include:

(a) Diagnostic assessments to determine areas of highest academic need of the individual student, a method to assess the priority educational needs of each individual student and to determine the academic expectations to be exhibited by the student at the end of the program;

(b) Development of goals in consultation with classroom teachers, for eliminating the identified academic need, including timeline and specific measurable outcomes;

(c) Formative and summative assessments to facilitate student progress and to determine when the student has achieved the learning goals of the intervention plan;

(d) Instructional strategies that are varied and that do not replicate practices that have proven to be ineffective for the student in the traditional classroom;
Section 3. Student Selection: (Selection of pupils to receive extended-school services shall be as follows): (1) Each school district shall select pupils as described in Section 2(1) of this administrative regulation who need additional instructional time [to attain academic expectations]. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension. The needs of students in A5 and A6 programs, as defined in 703 KAR 5.001, shall be considered in the selection process.

(2) [a] Within its scope of authority, a local board of education or school council may mandate the participation of eligible students to extended school services through the adoption of a written policy, which shall describe the conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(3) [b] Conditions for attendance for extended school service shall include:

(a) Identification of the learning goals and benchmarks that, when achieved, indicate that the student may exit the extended school services program;

(b) The characteristics of the students who will be required to attend;

(4) [c] A description of the criteria by which they may exit the extended school services program or may no longer be required to attend;

(5) The conditions under which a targeted student may be excused from attendance; and

(d) The arrangements for transporting the students mandated to attend.

(5) [d] The local school board shall provide notice of the policy in the district’s annual extended school services program report which is submitted at the same time as the district’s comprehensive school improvement plan.

(6) (1) One or more of the following in assessing a student’s need for extended school services, the schools shall consider the student’s performance in:

(a) Academic skill areas for a single subject or single class, application of these skills to everyday life situations, and integration of skills and experiences to acquire new information;

(b) School attendance if it negatively affects academic performance;

(c) Patterns of promotion or retention;

(d) Physical and mental readiness for learning; and

(e) If applicable, readiness for transition to work, postsecondary education, or the military.

(7) The following methods of documentation shall be used to determine whether a student shall be determined eligible and in greatest need of extended school services:

(a) Teacher recommendations (based upon classroom observation and anecdotal records or parent recommendation);

(b) Academic performance data, including diagnostic, formative or interim and benchmark assessments, and summative assessments;

(c) Student performance on high school, college, and workforce readiness assessments required by KPS 158 6456; or

(d) Based upon analysis of student work and formal and informal measurements of progress, or

(e) Behavioral and developmental progress as documented in formal and informal assessments and reports.

(6) (1) Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(7) A local school district shall solicit input from parents and the community to identify potential barriers to participation. Identified barriers shall be addressed through engagement with community partners or collection of after-school, weekend, or evening services.

(8) Schools shall inform parents and guardians of extended school services [which will be offered in the school setting] including:

(a) The rationale for offering extended school services, includ-
ing data about educational achievement and further earnings, opportunities for postsecondary education and training, and consequences of failure to achieve the high school diploma. A general notification which describes the nature of the services to be offered including the opportunities for maintenance of performance, prevention of failure and reduction of academic deficiencies."

(b) A specific notification to parents or guardians of their child's eligibility to receive or assignment to extended school services, including the manner in which a personalized intervention plan and goals will be included as part of the student's Individual Learning Plan to help ensure that the student is able to achieve the student's academic and career goals. A school shall maintain documentation of continuing and appropriate efforts to gain parental approval and support for students to attend the program offered outside of the school day, and

(c) Written procedures for parents or guardians to request reconsideration of their child's identification or lack of identification of eligibility for extended school services outside of the school day.

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs. (2) The commissioner of education shall determine the amount of the grant award for which each district shall be eligible based upon the following division of funds:

(a) One-half (1/2) of the total funds shall be distributed based on the most current average daily attendance (ADA); (b) One-sixth (1/6) of the total funds shall be distributed based on the most current average daily attendance (ADA); (c) One-sixth (1/6) of the total funds shall be distributed based on the most current average daily attendance (ADA); (d) One-sixth (1/6) of the total funds shall be distributed based on the most current CATS Academic Indices (AI).

(3) Actual district allocations shall be calculated as follows:

(a) Determine the state total for ADA by summing the ADA for all districts;
(b) Determine the percentage each district shall receive for ADA by dividing the district's ADA by the state total ADA. The resulting percentage (%) multiplied times the total funds available for average daily attendance equals the amount the district shall receive for ADA;
(c) State totals for ED, AI, and DR shall be calculated as follows:

1. The state total for ED shall be the sum of all districts' ED quotas. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA;
2. The state total for AI shall be the sum of all districts' AI quotas. Each district's AI quotient shall be calculated by subtracting the AI from 100 and then multiplying the difference by the district's ADA; and
3. The state total for DR shall be the sum of all districts' DR quotas. Each district's DR quotient shall be calculated by multiplying the district's DR times the district's ADA;
(d) Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED, as determined by paragraph (c)1 of this subsection. The resulting percentage (%) multiplied times the total funds available for economic deprivation shall equal the amount the district shall receive for ED;
(e) Determine the percentage each district shall receive for AI by multiplying the district's AI times the district's ADA and divide the result by the state's total AI as determined by paragraph (c)2 of this subsection. The resulting percentage (%) multiplied times the total funds available for academic indices shall equal the amount the district shall receive for AI;
(f) Determine the percentage each district shall receive for DR by multiplying the district's DR times the district's ADA and divide the result by the state's total DR as determined by paragraph (c)3 of this subsection. The resulting percentage (%) times the total funds available for dropout rate shall equal the amount the district shall receive for DR; and

(g) Sum the districts portions for ADA, ED, AI, and DR to determine the district's total ESS allocation.

(4) To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, a school district shall not receive a grant of less than $15,000.

(a) Grant awards shall be made to each school district upon approval by the commissioner of education of an application as prescribed in Section 5 of this administrative regulation. Regular grant funds shall be available for use by school districts for fifteen (15) months through September 30 of the last year of the grant period. All services shall be delivered by September 30 of the last year of the grant period and all expenditures shall be paid for extended school services by December 30 of the last year of the grant period.

(b) Received for extended school services shall be expended for Instructional and support services necessary to provide an effective program.

(c) These services shall include salaries of personnel.

(d) Transportation and staff development related to the provision of extended school services shall be permissible support services. Support may include expenditures for field trips which shall not exceed two (2) percent of the district's allocation for students served by the extended school services program.

(e) Funds for extended school services shall not be used for capital outlay or indirect costs.

(f) School districts shall be authorized to enter into contractual arrangements if necessary to provide comprehensive extended school programs.

(g) The funds may be expended for instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.

(h) Part of these funds may be used for up to three (3) percent of the district's allocation for operation of plant for a summer extended school services program which shall be prorated if other programs are taking place at the same time and place.

(i) Part of these funds may be used for administrative costs which shall not exceed five (5) percent of the district's allocation.

(j) Students shall not receive monetary compensation to attend the extended school services program.

(k) School districts shall have on file criteria for the selection of personnel employed in extended school services and ensure staffing decisions are made to best meet the needs of students.

(7) Financial records for extended school services shall be maintained by each school district and shall be submitted to the Department of Education via the state technology system.

Section 5. Requesting Funds. (1) The request for the use of extended school services funds shall be submitted as part of the comprehensive district's improvement plan.

(2) (a) District applications for funds shall be approved by the commissioner of education prior to the encumbrance or expenditure of funds for extended school services by any school district, including the contracting for personnel for extended school services.

(b) Approval of programs as described in each district's comprehensive improvement plan, required program reports, and request for a waiver for alternative service delivery shall be based on this administrative regulation and KRS 158.070.

Section 6. Program Evaluation. School districts providing extended school services shall submit to the Department of Education:

(1) Student data through the student information system and the Individual Learning Plan (ILP) Program at the end of the regular school term and any summer term in which funds are expended for extended school services;

(2) [a-separate-written] Evaluation and evaluative data as approved in the waiver application, if the school district receives approval to implement extended school services during the regular school year; and

(3) [Comparative] Data relative to the effectiveness of the extended school service program, including [regular extended extended school service program and the daytime extended school service program including]
(a) Pre- and post student qualitative and quantitative performance data;
(b) Student attendance at extended school services; and
(c) Promotion and graduation data [resulting-from participation in extended school services].

Section 7. Waiver for Alternative Service Delivery. The commissioner of education may consider a request for a waiver to operate a program during the school day or to use an alternative delivery format. A request for waiver shall include:
(1) A rationale describing why a daytime program is needed in addition to the regular extended school services program, including specific data and documentation of efforts to serve individual students during the regular extended school program;
(2) A description of the instructional program that meets the criteria established in Section 2 of this administrative regulation [and includes a schedule that ensures each participating student receives additional instructional time during the school day without missing instruction in the same or other assessed-content area. The regular program teacher in collaboration with the teacher delivering extended school services shall set measurable goals and objectives for student and teacher performance, including formal and informal assessments that extend beyond classroom grades and CATS scores];
(3) A description of the student selection process that meets the criteria in Sections 2 and 3 of this administrative regulation; and
(4) The waiver budget using correct MUNIS codes. A person compensated with ESS funds shall devote his or her time to delivering ESS services during the time period for which he or she is being compensated with ESS funds.

(5) Specific information related to program evaluation described in Section 5 of the administrative regulation. It shall include a continuous monitoring and evaluation plan to ensure the needs of individual learners are met.

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
JOSEPH E. BROTHERS, Chairperson
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 15, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 24, 2008 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 1, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTAC PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown
(1) Provide a brief summary of:
(a) What this administrative regulation does:
The Kentucky Education Reform Act (KERA) included language requiring the provision of "continuing education" which later became known as "Extended School Services (ESS)." KRS 156.070 requires extra instructional time be provided beyond the regular school day, school week, or year for students who need additional time to achieve learning outcomes; and funding is provided to support these services.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070 that requires extra instructional time be provided beyond the regular school day, school week, or year for students who need additional time to achieve learning outcomes; and funding is provided to support these services.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for implementing extended school services and outlines the funding formula for the distribution of ESS funds.
(d) How this administrative regulation currently assists or will assist in the effective achievement of the statutes: This administrative regulation provides specifics for implementing extended school services and outlines the funding formula for the distribution of ESS funds.
(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: KDE has revised the regulation based on the OEA recommendations that required policy changes. Flexibility: The language in the proposed regulation would allow schools and districts the flexibility of utilizing ESS funds for daytime waivers by completing the customary application form for approval, or by including the daytime waiver information in the school or district's comprehensive improvement plan. Individualized Instructional Plan: Student data will be monitored through the use of an Individualized learning plan containing learning goals and both pre and post assessment for each student. Teachers of students of grades 6-12 will use the newly developed Individual Learning Module of the Individual Learning Plan (ILP). The revised ILP module will include space for documenting student interventions, which would include ESS information. The regulation now defines the components of a balanced assessment system and supports the collection of data in various ways (e.g., diagnostic, formative, summative) to support student learning.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify and update the requirements of extended school services.
(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the extended school services.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to school districts more clarity and update the requirements of extended school services.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or, by the change, if it is an amendment, including: The proposed amendment will impact all school districts in Kentucky by allowing schools and districts the flexibility of utilizing ESS funds for daytime waivers by completing the customary application form for approval, or by including the daytime waiver information in the school or district's comprehensive improvement plan and student data around ESS will be monitored through the use of an individualized learning plan containing learning goals and both pre and post assessment for each student. The regulation now defines the components of a balanced assessment system and supports the collection of data in various ways (e.g., diagnostic, formative, summative) to support student learning.
(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 districts and schools will need to do the following: Review criteria for placement in ESS and make sure priority is given to students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or meet
academic expectation without additional time. Plan, document and evaluate extended school services through the intervention plan, at primary through grade 5, or in the student's Individual Learning Plan, in grades six through 12. Include diagnostic assessments to determine areas of need, goals for eliminating the identified academic deficiencies, including timelines and outcomes for formative and summative assessments, instructional strategies that are varied, a plan for consistent us of supports by teachers and counseling/academic advising. Kentucky Department of Education staff will need to develop a streamlined waiver process so that districts that choose to submit the waiver instead of putting in the Comprehensive School Improvement Plan will have a way to submit efficiently. They will also need to provide models of exemplary programs. These actions are not required by regulation but will assist in the implementation 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)? For schools and districts, ESS services in the last budget (2006/2008) were budgeted at $31 million each year. The 2009/2010 is $13,228,700 each year. The requirements of this regulation require more funds than are available to serve all of the students served in the last budget. Therefore, districts and schools will be reducing services to students or making up the costs themselves out of their already limited budgets.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Kentucky school districts will have the incentive to improve the quality of their programs for students who are at risk academically. Department of Education staff will have updated regulations that support ESS.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Department of Education will not incur any additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Extended School Services 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: For schools and districts, ESS services in the last budget (2006/2008) were budgeted at $31 million each year. The 2009/2010 is $13,228,700 each year. The requirements of this regulation require more funds than are available to serve all of the students served in the last budget. Therefore, districts and schools will be reducing services to students or making up the costs themselves out of their already limited budgets.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.035, 156.070, 157.320, 157.360, 157.370; 157.350; 157.410; 157.430; 157.440; 157.615; 158.135; 160.590; 160.595.

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 additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation depends greatly on the assessment values that are established by the Department of Revenue. No additional costs are expected other than any specific allocation made to fund the content and attendance growth provision.

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

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

COUNCIL ON POSTSECONDARY EDUCATION

(3) 785 KAR 1:101. GED Testing Program.

RELATES TO. KRS 151B.125
STATUTORY AUTHORITY: KRS 151B.023, 151B 410[---EO 2004-226]
NECESSITY, FUNCTION, AND CONFORMITY. KRS 151B.410(1) requires the Kentucky Department for Adult Education Program [and-literacy] to administer a statewide adult education and literacy program, and to promulgate [necessary] administrative regulations to effect this mandate[and administer a statewide adult education and literacy system throughout the state]. KRS 151B.023 requires Kentucky Department for Adult Education [and-literacy] to implement [the] twenty (20) year state strategy to reduce the number of adults at the lowest levels of literacy and most in need of adult education and literacy services. KRS 151B.125 recognizes the Tests of General Educational Development or GED Tests[tests] for high school equivalency purposes in Kentucky. [EO 2004-226 abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondary Education.] This administrative regulation establishes the procedure for testing an adult for the GED diploma.

Section 1. Test Purpose. The GED Tests[tests] shall provide a valid means of measuring the educational achievement of an adult who is a non-high school graduate and of comparing the adult's competency to[with] that of high school graduates. The tests[tests] shall be a high school level battery consisting of five (5) comprehensive examinations covering:
(1) Language arts, writing;
(2) Social studies;
(3) Science;
(4) Language arts, reading; and
(5) Mathematics.

Section 2. Test Centers. Official GED testing centers shall be established under contract with the GED Testing Service. Kentucky Adult Education shall authorize the location of these centers.

Section 3. Test Scores. (1) Kentucky Adult Educator shall:
(a) Administer the scoring of the tests;
(b) Accept scores as official if reported by:
1. A state, territorial, or provincial department of education;
2. A GED testing center;
3. The GED Testing Service; or
4. The Defense Activity for Nontraditional Education Support, DANTES, (as the repository of score reports issued by the U.S. Armed Forces Institute).

- 1285 -
(2) An applicant shall achieve the minimum standard score on each subtest and the minimum overall average score on the Official GED Tests as set by GED Testing Service. If an applicant passes the five (5) subtests with a minimum standard test score on each subtest, but does not attain an overall average standard score, the applicant shall be eligible to retake any subtest in an attempt to raise the overall standard score.

Section 4. GED Diploma. Kentucky Adult Education shall provide a high school equivalency diploma to an applicant who meets all the provisions of this administrative regulation and the eligibility requirements established by 785 KAR 1:130.

Section 5. Test Fees. (1) Effective July 1, 2009. The testing fee shall be a uniform fee of:
(a) Fifty ($50.00) dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Twenty-five ($25.00) dollars per subsession [limit: five (5) dollars per subtest]
The testing fee shall be a uniform fee of forty ($40.00) dollars per test or ten ($10.00) dollars per subtest.
(2) Effective July 1, 2010, the testing fee shall be a uniform fee of:
(a) Fifty-five ($55.00) dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Twenty-five ($25.00) dollars per subsession.
(3) Effective July 1, 2011, the testing fee shall be a uniform fee of:
(a) Sixty ($60.00) dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Thirty ($30.00) dollars per subsession.
(4) A person who retests shall be assessed the fee contained in subsection (1)(b), (2)(b), or (3)(b) of this section as appropriate to the date of the retest, but subject to the limitation that the total amount assessed shall not exceed the limit contained in subsection (1)(a), (2)(a), or (3)(a) of this Section regardless of the number of subtests retested.
(5) A request for a duplicate transcript or diploma shall be in writing and shall carry the signature, birth date, and Social Security number of the examinee and shall be accompanied by the payment of:
(a) A ten ($10.00) five (5) dollar processing fee assessed for the issuance of a duplicate transcript request; or
(b) A twenty-five ($25.00) dollar fee assessed for the issuance of a duplicate transcript.

JOHN TURNER, Chair
DENNIS L. TAULBEE, General Counsel
APPROVED BY AGENCY: October 3, 2008
FILED WITH LRC: October 6, 2008 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on 785 KAR 1:010, GED Testing Program shall be held on November 25, 2008 at 10 a.m. at the Council on Postsecondary Education, Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 2008, five working days prior to the hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be 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. 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: B. J. Helton, Senior Associate and GED Administrator, Kentucky Adult Education, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601. Telephone (502) 573-5114, ext. 102, fax (502) 573-5436, email bj.helton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: B. J. Helton, Senior Associate and GED Administr
VOLUME 35, NUMBER 5 — NOVEMBER 1, 2008

Test centers currently pay for the costs in excess of fees earned.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Student fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change it is an amendment: Yes. The purpose of this amendment is to change the fee structure, and to avoid the prospect of severe cuts in services.

(9) TIERING: Is tiering applied? Tiering is not appropriate under these circumstances.

LABOR CABINET
Department of Workplace Standards
Amendment

803 KAR 2:300. General.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.3-1910.7

STATUTORY AUTHORITY: KRS 338.051(3), 338 061

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-472, effective June 15, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were enacted. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.3-1910.7 establishes occupational safety and health standards found to be national consensus standards or established federal standards to be enforced by the Department of Workplace Standards [Office of Occupational Safety and Health] in general industry. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards [Office of Occupational Safety and Health] in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet [Commissioner of Labor, Kentucky Department of Labor, or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor].

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet [Commissioner of Labor, Kentucky Department of Labor, or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor].

(9) "Standard" is defined in KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet [Department of Labor] U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: General Industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation and requirements in Section 3 of the administrative regulation:

(1) 29 C.F.R. 1910.3-1910.7, revised July 1, 2008; 2006; and


Section 3. Purpose and Scope. The general industry standards established in 29 C.F.R. Part 1910, and referenced in KAR Title 803 shall apply to all employers, employees, and places of employment throughout the Commonwealth of Kentucky except if excluded by KRS 338.021-

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo, OHST

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.3 through 1910.7. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.6, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. The amendment removes and reserves paragraphs 29 C.F.R. 1910.6(e)(1), (e)(2), (e)(5), (e)(62), (e)(53), (l)(1), and updates paragraphs (o)(15), (o)(49), and (q)(60). On December 14, 2007, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register removing a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules, and removed a reference to a 1969 American Welding Society document. The references are unnecessary and confuse employers about their compliance obligations. This amendment does not alter existing compliance requirements or reduce employee protection. In fact, OSHA states the amendment will enhance employee safety by eliminating confusing requirements and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's
Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing a clear understanding of the 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 administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in Executive Order 2006-472. Section 2 requires employers in the manufacturing industry to comply with the requirements of 29 C.F.R. 1910.1 through 1910.7. Section 2 also updates the C.F.R. to July 1, 2008. The amendment removes and reserves paragraphs 29 C.F.R. 1910.5(e)(1), (e)(5), (e)(11), (e)(63), (e)(11) and updates paragraphs (e)(13), (e)(49), and (q)(3). Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entries 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 identified in question (3) will not have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules, and removed a reference to a 1969 American Welding Society document.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(9) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or, by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Pub.L. 91-596 64 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules, and removed a reference to a 1969 American Welding Society document.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules, and removed a reference to a 1969 American Welding Society document.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.66-1910.68

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: ED 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.66-1910.68 establishes federal requirements [occupational safety and health standards] relating to powered platforms, manlifts, and vehicle-mounted work platforms [to be enforced by the Office of Occupational Safety and Health in general industry]. This administrative regulation establishes the powered platforms, manlifts, and vehicle-mounted work platform standards to be enforced by the Department of Workplace Standards [Office of Occupational Safety and Health Compliance] in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet (Commissioner of Labor, Kentucky Department of Labor or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor.)

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4)(4) "Employer" is defined in KRS 338.015(1).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, as modified by the standards established in Section 1 of this administrative regulation.]

(a) 29 C.F.R. 1910.66-1910.68 and Appendices, revised July 1, 2008(2006); and


J.R. GRAY, Secretary
APPROVED BY AGENCY: October 6, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1862.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo, OHST

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redesignes terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.66 through 1910.68. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.68, published in the December
14, 2007 Federal Register, Volume 72, Number 240, and con-

firmed in the March 14, 2007 Federal Register, Volume 73, Num-

ber 51. On December 14, 2007, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register removing a number of references to outdated consensus standards that have requirements which duplicate or are comparable to the requirements specified by other OSHA rules. The references are unnecessary and confuse employers about their compliance obligations. This amendment does not alter existing compliance requirements or reduce employee protection. In fact, OSHA states the amendment will enhance employee safety by eliminating confusing requirements and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 134 considerations.

(b) The necessity of this administrative regulation: Kentucky’s Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, in Section 1, defines terms not found in the federal standard and redesignates terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.66 through 1910.68. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.68, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 134 considerations.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard and redesignates terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.66 through 1910.68. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.68, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 134 considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(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 identified in question (3) will not have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate or are comparable to the requirements specified by other OSHA rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or
responsibilities than those imposed by the federal standards.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061,Pub.L.91-596 §4 STAT. 1590, 29 C.F.R. Parts 1925 and 1953.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) in 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? This amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.
(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.
Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
(Amendment)


STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to these entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards, Within the Department of Workplace Standards, a Division of Occupational Safety and Health Education and Training were created. KRS 338.051 requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS 338.051. KRS 2008-2013 established federal requirements relating to occupational noise exposure. This administrative regulation establishes the occupational health and environmental control standards to be enforced by the Department of Workplace Standards/Office of Occupational Safety and Health in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet (the Secretary of Labor, Commonwealth of Kentucky, Commonwealth of Kentucky).
(3) "C.F.R." means Code of Federal Regulations.
(4) "Standard" is defined in KRS 338.015(3).
(5) "U.S. Department of Labor" means Kentucky Labor Cabinet (Department of Labor), U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 and requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

Section 3. Occupational Noise Exposure. (1) [Except as provided in subsections (2) to (8) of this section, general industry shall comply with 29 C.F.R. 1910.94 to 1910.98, revised as of July 1, 2006.]
(2)(3)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(1).
(b) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including a minimum of 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz shall be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests shall include 6,000 Hz.
(2)(3)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(4).
(b) Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. If an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.
(3)(4)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(b).
(b) Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this check. Deviations of fifteen (15) decibels or greater shall require an exhaustive calibration.
(4)(5)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(b).
(b) An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2: 4.1.3: 4.1.4.3: 4.2: 4.4.1: 4.4.2: 4.4.3: and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this calibration.
(5)(6)(a) The language relating to access to information and training materials requirements for occupational noise exposure in
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

<table>
<thead>
<tr>
<th>Frequency, Hz</th>
<th>Reference threshold level for TDH-39 earphones, dB</th>
<th>Sound level meter level reading, dB</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>11.5</td>
<td>81.5</td>
</tr>
<tr>
<td>1000</td>
<td>7.67</td>
<td>7.0</td>
</tr>
<tr>
<td>2000</td>
<td>9.07</td>
<td>9.0</td>
</tr>
<tr>
<td>3000</td>
<td>9.10</td>
<td>80.0</td>
</tr>
<tr>
<td>4000</td>
<td>9.57</td>
<td>9.5</td>
</tr>
<tr>
<td>6000</td>
<td>15.5</td>
<td>85.5</td>
</tr>
<tr>
<td>8000</td>
<td>13.0</td>
<td>83.0</td>
</tr>
</tbody>
</table>

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

<table>
<thead>
<tr>
<th>Frequency, Hz</th>
<th>Reference threshold level for TDH-49 earphones, dB</th>
<th>Sound level meter level reading, dB</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>13.5</td>
<td>83.5</td>
</tr>
</tbody>
</table>

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo, OHST
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.94 through 1910.98. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.94, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. On December 14, 2007, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register removing a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules. The references are unnecessary and confuse employers about their compliance obligations. This amendment does not alter existing compliance requirements or reduce employee protection. In fact, OSHA states the amendment will enhance employee safety by eliminating confusing requirements and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1923 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing a clear understanding of the 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 administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.94 through 1910.98. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.94, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1932 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338 051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry, covered by KRS Chapter 338.

(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 identified in question (3) will not have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing

(Federal MANDATE ANALYSIS COMPARISON)

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1922; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky’s Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Section 3 of this administrative regulation carries requirements which are more stringent than those required by OSHA. This administrative regulation requires a 6,000 Hz frequency, which the federal regulation does not. This provision has been in place since December 15, 1989.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This provision in Section 3 of this administrative regulation which requires that audiometric tests and equipment include the 8,000 Hz frequency has been in place since December 15, 1989. This provision for the inclusion of the 8,000 Hz frequency is in order to comply with the International Standards Organization (ISO) standard 6129-1983, *Acoustics — Pure tone air conduction threshold audiometry for hearing conservation purposes.*

FISCAL NOTE ON 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 cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1922 and 1953.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None 
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None 
(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules. 
(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules. 

No specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards (Amendment)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned it to all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.101-1910.126. Establishes federal requirements relating to hazardous materials. This administrative regulation establishes hazardous materials standards to be enforced by the Department of Workplace Standards' Office of Occupational Safety and Health, Division of Compliance, in the area of general industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet (the Commissioner of the Department of Labor, Commonwealth of Kentucky) 
(2) "C.F.R." means Code of Federal Regulations. 
(3) "Employee" is defined in KRS 338.015(2). 
(4)(a) "Employer" is defined in KRS 338.015(1). 
(5)(4) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements found in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 
(1) 29 C.F.R. 1910.101-1910.126, revised July 1, 2008; and 

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).
(2) Automotive service station, or service station, means that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, and accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10:30 A.M. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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 below.

CONTACT PERSON: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: David Stumbo, OHST
(1) Provide a brief summary of: 
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.101 through 1910.126, Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.103, 29 C.F.R. 1910.110, and 29 C.F.R. 1910.111, all published in the December 14, 2007 Federal Register, Volume 73, Number 51. On December 14, 2007, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register removing a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules. The references are unnecessary and confuse employers about their compliance obli-
This amendment does not alter existing compliance requirements or reduce employee protection. In fact, OSHA states the amendment will enhance employee safety by eliminating conflicting requirements and clarifying employer obligations. Finally, this amendment does not alter the requirements of the federal program.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the 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 administrative regulation, in Section 1, defines terms not found in the federal standard and redrafts terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.101 through 1910.125. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.103, 29 C.F.R. 1910.110, and 29 C.F.R. 1910.111, all published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the types and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(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 identified in question (3) will have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Current state and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING. Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.
FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What unit, part, or division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub L. 91-598 84 STAT. 1590, 29 C.F.R. Parts 1922 and 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.
   (d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 2:309. General environmental controls.


STATUTORY AUTHORITY: KRS 338.051(2), 328.061

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.141 to 1910.147.[establishes] the federal requirements relating to general environmental controls. This administrative regulation establishes the general environmental controls standards to be enforced by the Department of Workplace Standards in general industry [Office of Occupational Safety and Health, Division of Compliance in the area of general industry].

Section 1. Definitions (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner of Department of Workplace Standards, Labor Cabinet.
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined in KRS 338.015(2).
(5) "Employer" is defined in KRS 338.015(1).
(6) "Established federal standard" is defined in KRS 338.015(10).
(7) "National consensus standard" is defined in KRS 338.015(9).
(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) "Standard" is defined in KRS 338.015(3).
(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.

Section 2. Except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Registrar, National Archives and Records Service, General Services Administration: (1) 29 C.F.R. 1910.141-1910.147, revised July 1, 2006; and

Section 3 [Construction of Water Closets] (1)(a) Construction of Water Closets. The requirements relating to construction of water closets in paragraph (b) of this subsection (2)(a)-of-this-section shall apply in lieu of 29 C.F.R. 1910.141(1)(c)(2)(i).
(b)(i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.
(2)(a) Lockout. (4)(h) The requirements relating to the utilization of lockout procedures in paragraph (b) of this subsection (2)(a)-of-this-section shall apply in lieu of 29 C.F.R. 1910.141(1)(c)(2)(i).
(b)(ii) If an energy isolating device is capable of being locked out, the employer’s energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.
(3)(a) Full employee protection. The requirements relating to tag location in subsection (b)(4)(ii) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(5)(ii).
(b)(4)(ii) Full employee protection. When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. If tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2006
FILED WITH LRC: October 9, 2008 at 5 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10:30 a.m. (EDT) at the Department of Labor, 1407 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their
intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: David Slumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1632.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Slumbo, OHST

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.141 through 1910.147. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.144, and 29 C.F.R. 1910.111, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finalizes this amendment as a part of the administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1915 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.141 through 1910.147. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.144, and 29 C.F.R. 1910.111, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finalizes this amendment as a part of the administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1915 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.
(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 identified in question (3) will have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost to implement this regulation.
(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.
FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, such as increased or different responsibilities or requirements, than those required by the federal mandate? Yes. Section 3 of this amendment imposes different requirements or responsibilities than those required by the federal standards. Section 3 of this amendment imposes stricter requirements or responsibilities than those required by the federal standards. These provisions have been in place since December 15, 1989.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the amendment 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? This amendment will impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.
   (d) How much will it cost to administer this program for subsequent years? This amendment will impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

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

Revenue (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LAW SEE: Labor Cabinet

Department of Workplace Standards

(Amendment)

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.241 - 910.246

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-472, effective June 18, 2004, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Office of Occupational Safety and Health Standards Board. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of 29 C.F.R. 1910.241 to 1910.246 establishes the federal regulations relating to hand and portable powered tools and other hand-held equipment. This administrative regulation establishes the hand and portable powered tools and other hand-held equipment standards to be enforced by the Department of Workplace Standards in general industry. The administrative regulation establishes the standards for hand-held equipment to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
   (2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet. "Assistant Secretary of Labor" means the Commissioner of the Department of Labor, Commonwealth of Kentucky. "Assistant Secretary of Labor" means the Commissioner of the Department of Labor, Commonwealth of Kentucky.
   (3) "C.F.R." means Code of Federal Regulations.
   (4) "Employer" is defined by KRS 338.019(2).
   (5) "Employee" is defined in KRS 338.015(1).
   (6) "Labor" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

Archives and Records Services, General Services Administration;
(1) 29 C.F.R. 1910.241-1910.245, revised July 1, 2008; and
(2) The amendment to 29 C.F.R. 1910.243 published in the
December 14, 2007 Federal Register, Volume 72, Number 240
(72 Fed. Reg. 71070) and confirmed in the March 14, 2007 Federal
as provided in subsection (2) of this section, general industry shall
comply with the requirements of 29 C.F.R. 1910.241-1910.246,
revised as of July 1, 2006, as amended by the definitively
established in Section 1 of this administrative regulation.

Section 3[6] An employer required by Section 1[subsection (4)] of this administrative regulation[subsection] to report information to the U.S. Department of Labor or a subsidiary thereof shall report the information to the Kentucky Labor Cabinet, Department of Workplace Standards[Department of Labor, Office of Occupational Safety and Health], US 127 South, Frankfort, Kentucky 40601.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 8, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing. The intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: David Shumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Shumbo, OHST
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.241 through 1910.246. Section 2 also updates the C.F.R. to July 1, 2006 and establishes the technical amendment to 29 C.F.R. 1910.243, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this requirement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the 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 administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in Executive Order 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.241 through 1910.246. Section 2 also updates the C.F.R. to July 1, 2006 and establishes the technical amendment to 29 C.F.R. 1910.243, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of the amendment to this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How the amendment assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.
(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 identified in question (3) will not have to take any action 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): This amendment requires no expenditures by entities in question (3).
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment. Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 2:316. Welding, cutting, and brazing.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.251
-1910.255

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: F.U. 2006-172, effective June 16, 2006, established the Labor Cabinet and assigned to it all organizational units within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allocations, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allocations, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338 051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.251 to 1910.255 establishes the federal requirements relating to welding, cutting, and brazing. This administrative regulation establishes the welding, cutting, and brazing standards to be enforced by the Department of Workplace Standards Office of Occupational Safety and Health, Division of Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet [the Commissioner of the Department of Labor, Commonwealth of Kentucky].
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined in KRS 338 015(2).
(5)(49) "Employer" is defined in KRS 338.015(1).
(6)(49) "Standard" is defined in KRS 338.015(3).
(7)(49) "U.S. Department of Labor" means Kentucky Labor Cabinet (Department of Labor), U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.251 through 1910.255, revised July 1, 2008, and
(2) The amendment to 29 C.F.R. 1910.251 published in the December 14, 2007, Federal Register, Volume 72, Number 240 (72 Fed. Reg. 71707) and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51 (73 Fed. Reg. 13753). General industry shall comply with the requirements of 29 C.F.R. 1910.251 through 1910.255, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 7, 2008 at 10:00 a.m. (CDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend if no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: David Stumbo, OHS, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo, OHS

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.251 through 1910.255. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.251, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. On December 14, 2007, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register removing a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules. The references are unnecessary and confuse employers about their compliance obligations. This amendment does not alter existing compliance requirements or reduce employee protection. In fact, OSHA states the amendment will enhance employer compliance by clarifying employer requirements and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary:
(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.251 through 1910.255. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.251, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 203.

(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 identified in question (3) should not have to take any action in compliance with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.
(b) In complying with this administrative regulation or amend-
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

ment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirements, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, Pub.L. 91-556, the Occupational Safety and Health Act of 1970, Section 16; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 338.051, 338.061, Pub.L. 91-556 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 2:317. Special Industries.

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: EQ 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budget, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health was created, 29 C.F.R. 1910.210-1910.272 established the federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace Standards/Office of Occupational Safety and Health, Division of Compliance, in the area of general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet (the Commissioner of the Department of Labor, Commonwealth of Kentucky).
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(2) "C.F.R." means Code of Federal Regulations.
(3) "Employee" is defined in KRS 338.015(2).
(4)(b) "Employer" is defined in KRS 338.015(1).
(6)(a) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:
(1) 29 C.F.R. 1910.281–1910.272, revised July 1, 2006 and
(2) The amendment to 29 C.F.R. 1910.261 published in the December 14, 2007 Federal Register, Volume 72, Number 240 (72 Fed. Reg. 71070) and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51 (73 Fed. Reg. 13275) for general industry, shall comply with 29 C.F.R. 1910.261 through 1910.272, revised as of July 1, 2006, as modified by the definitions established in Section 1 of this administrative regulation.

J R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008 at 10 30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in receiving notice of a hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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 December 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: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 504-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo, OHST
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.261 through 1910.272. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.261, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. On December 14, 2007, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register removing a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules. The references are unnecessary and confuse employers about their compliance obligations. This amendment does not alter existing compliance requirements or reduce employee protection. In fact, OSHA states the amendment will enhance employee safety by eliminating confusing requirements and clarifying employer obligations. Finally, this amendment satisfies this administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the 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 administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.261 through 1910.272. Section 2 also updates the C.F.R. to July 1, 2008 and establishes the technical amendment to 29 C.F.R. 1910.261, published in the December 14, 2007 Federal Register, Volume 72, Number 240, and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.
(b) The necessity of the amendment to this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.
(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 identified in question (3) will not have to take any action to comply with this amendment as this amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in...
question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(d) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KNS Chapter 339 are treated equally.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate.


2. State compliance standards Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

**FISCAL NOTE ON LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 § 44 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

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

**Revenues (+/-):** There will be no increase or decrease in local government revenues as a result of this amendment

**Expenditures (+/-):** There will be no increase or decrease in local government expenditures as a result of this amendment.

**Other explanation:** N/A

**PUBLIC PROTECTION CABINET**

Department of Insurance

Financial Standards and Examination Division

(Amendment)

806 KAR 3:170. Annual audited financial reports.


STATUTORY AUTHORITY: KRS 304.2-110, 304.3-240(2)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a Commissioner. KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, defined in KRS 304.1-010. KRS 304.3-240 authorizes the Executive Director of Insurance to require additional information to the annual statement filed by Insurers. This administrative regulation requires annual filing of audited financial reports by Insurers.

Section 1. Definitions. [As used in this administrative regulation:]

1. [Audited financial report] means and includes those items specified in Section 4 of this administrative regulation;

2. "Accident" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice, and for Canadian and British insurers, mean a Canadian-chartered or British-chartered accountant;

3. "Affiliate" or "affiliated" means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

4. "Audit Committee" means a committee, or equivalent body,
established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers.

(3) "Audited financial report" means and includes those items specified in Section 4 of the administrative regulation.

(5) "Commissioner" means the Commissioner/Executive-Director, or the Commissioner of the Department of the Kentucky Office of Insurance.

(6) "Controlling person" is defined in KRS 304.37-010(8).

(7) "Department" means Department of Insurance.

(8) "Group of Insurers" means those licensed insurers included in the reporting requirements of KRS 304.37-020, or a set of insurers as defined by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) "Insurer" means an insurer authorized to do business in Kentucky by the commissioner.

(10) "Internal control over financial reporting" means a process affected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statement.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under Section 404.

(13) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

(14) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201;

(b) The audit committee independence requirements of Section 301;

(c) The internal control over financial reporting requirements of Section 404.

(15) "Office" means the Kentucky Office of Insurance.

(16) "Peer group" means an insurer authorized to do business in Kentucky by the executive director.

(b) Communication of internal control related matters noted in an audit; and

(c) Management's report of internal control over financial reporting, if the financial statements reporting the financial position and results of operations of the group of insurers, or of the insurer, are reported in an annual report.

(2) Every insurer shall be subject to this administrative regulations. Insurers having direct premiums written in this state of less than one (1) million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct (directly) written policies nationwide at the end of the calendar year shall be exempt from this administrative regulation for years in which these conditions exist, (unless the commissioner/Executive-Director makes a specific finding that compliance is necessary for the commissioner/Executive-Director to carry out statutory responsibilities), except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of one (1) million dollars or more shall not be exempt.

(3) Foreign or alien insurers filing the audited financial report in another state, pursuant to the other state's requirement for filing an audited financial report, which has been found by the commissioner/Executive-Director to substantially similar to the requirements of this administrative regulation, are exempt from this administrative regulation if:

(a) The following documents, which are filed with the other state are filed with the commissioner/Executive-Director:

1. a copy of the audited financial report;

2. a communication of internal control related matters noted in an audit; and

3. a report on significant deficiencies in internal controls, and

(b) The accountant's letter of qualifications, which are filed with the other state, are filed with the commissioner/Executive-Director in accordance with the following requirements specified in Sections 4, 11, and 12 of the administrative regulation.

Canadian insurers may submit accountants reports as filed with the Office of Superintendent of Financial Institutions, Canada/Canadian Dominion Department of Insurance; and

(b) A copy of any notice of adverse financial condition report filed with the other state is filed with the commissioner/Executive-Director within the time specified in Section 9 of this administrative regulation.

(4) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state shall be exempt from filing the report in this state provided:

(a) The other state has substantially similar reporting requirements; and

(b) The report is filed with the commissioner of the other state within the time specified.

(5) This administrative regulation shall not prohibit, preclude, or in any way limit the commissioner/Executive-Director from ordering, conducting, or performing examinations of insurers under KRS 304.2-210 through 304.2-290, 304.17A-820, 304.32-210, 304.35-040, 304.56-140, 304.42-150, 304.48-110, 304.49-080, or 304.50-075 (Kathy Kentucky Insurance Code).

Section 3. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner/Executive-Director on or before June 1 for the year ended December 31 immediately preceding. The commissioner/Executive-Director may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner/Executive-Director for thirty (30) days upon showing by the insurer and its independent certified public accountant to the commissioner/Executive-Director of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the commissioner/Executive-Director to make an informed decision as to the requested extension.

(3) If an extension is granted in accordance with subsection (2)
of this section, a similar extension of thirty (30) days shall be
granted to the filing of management’s report of internal control over
financial reporting.

(4) Every insurer required to file an annual audited financial
report pursuant to this administrative regulation shall designate a
member of individuals as constituting its audit committee. The audit
committee of an entity that controls an insurer may be deemed to
be the insurer’s audit committee for purposes of this administrative
regulation at the election of the controlling person.

The annual audited financial report shall report the financial condi-
tion of the insurer as of the end of the most recent calendar year
and the results of its operations, cash flows, and changes in capital
and surplus for the year then ended in conformity with statutory
accounting practices prescribed, or otherwise permitted, by the
insurance supervisory authority of the insurer’s state of domicile.
(2) The annual audited financial report shall include the follow-
ing:
(a) Report of independent certified public accountant;
(b) Balance sheet for reporting admitted assets, liabilities, capi-
tal, and surplus;
(c) Statement of operations;
(d) Statement of cash flows;
(e) Statement of changes in capital and surplus;
(f) Notes to financial statements as required by KRS 304.3-240
in substance with KRS 304.3-241. These notes shall [be these
notes required by the appropriate National Association of
Insurance Commissioners’ Annual Statement Instructions and any other notes
required by generally accepted accounting principles and shall]
also include:
1. A reconciliation of differences, if any, between the audited
statutory financial statements and the annual statement filed
pursuant to KRS 304.3-240 with a written description of the nature of
these differences; and
2. A summary of ownership and relationships of the insurer
and all affiliated companies; and
(g) The financial statements included in the audited financial
report shall be;
1. Prepared in a form and using language and groupings sub-
stantially the same as the relevant sections of the annual state-
ment of the insurer filed with the commissioner [executive director] and

2. Comparative [the financial statement shall be comparative,]
presenting the amounts as of December 31 of the current year and
the amounts as of the immediately preceding December 31. How-
ever, in the first year in which an insurer is required to file an au-
dited financial report, the comparative data may be omitted. The annual statement forms and instructions are those prescribed by
the National Association of Insurance Commissioners as required by
KRS 304.3-240 [Life and Accident and Health (Form 1, 1990)
and Fire and Casualty (Form 2, 1990), incorporated by reference and available from the Kentucky Office of Insurance, 215 West
Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET),
weekdays].

Section 5. Designation of Independent Certified Public Account-
ant. (1) Each insurer required by this administrative regulation to
file an annual audited financial report shall, within sixty (60) days
after becoming subject to this requirement, register with the com-
misioner [executive director] in writing the name and address of
the independent certified public accountant or accounting firm re-
tained to conduct the annual audit set forth in this administrative
regulation. Insurers not retaining an independent certified public
accountant on the effective date of this administrative regulation
shall register the name and address of their retained certified public
accountant not less than six (6) months before the date when
the first audited financial report is to be filed.
(2) The insurer shall obtain a letter from the accountant, and
file a copy with the commissioner [executive director], stating that
the accountant is aware of the provisions of the insurance laws of
the insurer’s state of domicile that relate to accounting and financial
matters and affirming that the accountant will express the account-
ant’s opinion on the financial statements in terms of their conformi-
y to the statutory accounting practices prescribed or otherwise
permitted by the insurance regulatory authority in that state, speci-
flying any exceptions as the accountant may believe appropriate.
(3) If an accountant who was the accountant for the immediately
preceding filed audited financial report is dismissed or resigns
the insurer shall;
(a) Within five (5) business days notify the commissioner [office] of this event;
(b) Furnish [the insurer shall also furnish the commissioner
[executive director] with a separate letter within ten (10) business
days of the above notification stating whether in the twenty-four
(24) months preceding the accountant’s resignation there were any
disagreements with the former accountant on any matter of;
1. Accounting principles or practices;
2. [Financial statement disclosure; or
3. Auditing scope or procedure, which disagreements, if not
resolved to the satisfaction of the former accountant, would have
caused him to make reference to the subject matter of the disa-
greement in connection with his opinion. The disagreements re-
quired to be reported in response to this subsection shall include
both those resolved to the former accountant’s satisfaction and
those not resolved to the former accountant’s satisfaction. Disa-
greements contemplated by this section shall be those that
occur at the decision making level, that is, between personnel of
the insurer responsible for presentation of its financial statements
and personnel for the accounting firm responsible for rendering its
reporting];
(c) [Request [The insurer shall also in writing request] the
former accountant to furnish a letter addressed to the insurer stat-
ing whether the accountant agrees with the statements contained
in the insurer’s letter, and, if not, stating the reasons for which the
accountant does not agree,] and
(d) Furnish [the insurer shall furnish] the responsive letter from
the former accountant to the commissioner [executive director]
[together with its own].

Section 6. Qualifications of Independent Certified Public Ac-
countant. (1) The commissioner [executive director] shall not rec-
ognize any person or firm as a qualified independent certified pub-
lic accountant if the person or firm;
(a) Is [that is] not in good standing with the American Institute
of Certified Public Accountants and in all states in which the
accountant is licensed to practice, or, for a Canadian or British
insurer, that is not a chartered accountant; or
(b) Has either directly or indirectly entered into an agreement
of indemnity or release from liability with respect to the audit of the
insurer.
(2) Except as otherwise provided in this administrative regula-
tion, an independent certified public accountant shall be recog-
nized as qualified and [in the long as] the independent certified public
accountant conforms to the standards of the accounting profes-
sion, as contained in the [Statements of Professional Conduct of the
American Institute of Certified Public Accountants (January 12,
1998) and] statutes, administrative regulations, and codes of ethics
and rules of professional conduct administered by the State Board
of Accountancy of Kentucky in accordance with KRS Chapter 325
and 201 KAR Chapter 1(1993), or similar code both incorporated by
reference and available from the Kentucky Office of Insurance,
215 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to
4:30 p.m. (ET), weekdays.
(3) The lead or coordinating audit partner having primary re-
sponsibility for the audit shall not [have] that person be [or]
shall not be [partner of other person responsible for rendering a report may] act in that capacity for more than seven (7) consecutive years. The [following any period of service the person shall be disqualified from acting in that or any similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five (5) to (6) years] and [if the]
requirements of this subsection shall become effective two (2) years after the
effective date of this administrative regulation.
(a) An insurer may make application to the commissioner
[executive director] for relief from this rotation requirement on the
basis of unusual circumstances. Application shall be made at least
thirty (30) days before the end of the calendar year. The commis-
sioner [executive director] may consider the following factors in
determining if the relief should be granted:
1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer;
3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file with its annual statement filing the approval for relief from paragraph (a) of this subsection with the states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nonresident state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/index.

c.(c) The commissioner (executive director) shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report performed in whole or in part by any natural person who:
1. Has been convicted of fraud, bribery, a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968, or any dishonest conduct or practice under federal or state law;
2. Has been found to have violated the insurance laws of the state with respect to any previous reports submitted under this administrative regulation, or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this administrative regulation.

(4) If an insurer disagrees with a determination made by the commissioner (executive director) pursuant to subsection (3) of this section, it may request a hearing in accordance with KRS 304-2-311 (see K.R.S. Chapter 304-2).

(5)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report prepared in whole or in part by any accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:
1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;
2. Financial information systems design and implementation;
3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
4. Actuarily-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statements only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:
   a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
   b. The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility;
   c. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
5. Internal audit outsourcing services;
6. Management functions or human resources;
7. Broker or dealer, investment adviser, or investment banking services; or
8. Legal services or expert services unrelated to the audit.
(b) A qualified independent public accountant shall not:
1. Function in the role of management;
2. Audit his or her own work; and
3. Serve in an advocacy role for the insurer.

(6)(a) Insurers having direct written and assumed premium of less than $100,000,000 in any calendar year may request an exemption from subsection (5)(a) of this section.

(b) To request an exemption, the insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(c) If the commissioner finds, upon review of this statement, that compliance with this administrative regulation would constitute an organizational hardship upon the insurer, an exemption may be granted.

(7) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not disapproved in subsection (6)(a) of this section or that do not conflict with subsection (5)(b) of this section, only if the activity is approved in advance by the audit committee in accordance with subsection (8) of this section.

(8)(a) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee.

(b) The preapproval requirement is waived with respect to nonaudit services if:
1. The insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity;
2. The aggregate amount of all non-audit services provided to the insurer constitutes no more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;
3. The services were not recognized by the auditor at the time of the engagement to be nonaudit services; and
4. The services are properly brought to the attention of the audit committee and approved prior to the completion of the year.

(c) The audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant approvals required by subsection (8) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the commissioner (executive director) for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports. If the insurer is part of a group of insurers which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report.
as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of Independent Certified Public Accountant. (1) Financial statements furnished pursuant to Section 4 of this administrative regulation shall be examined by the independent certified public accountant.

(2) The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with SAS No. 109, "Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement" and SAS No. 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained," or their replacements, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by SAS 109 and SAS 110, for those insurers required to file a management's report of internal control over financial reporting pursuant to Section 2 of this administrative regulation, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall also be given to other procedures illustrated in the Financial Condition Examiner's Handbook of the National Association of Insurance Commissioners ((1999)), incorporated by reference and available from the Kentucky Office of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays, which the independent certified public accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1)(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its ad hoc committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner [executive director] as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of KRS 304.4-120 and 304.3125 the Kentucky Insurance Code as of that date.

(b) An insurer which has received a report pursuant to this subsection shall forward a copy of the report to the commissioner [executive director] within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner [executive director].

(c) If the independent certified public accountant fails to receive this evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner [executive director] a copy of its report within the next five (5) business days.

(2) An independent certified public accountant shall not be liable for any statement made in good faith in compliance with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this administrative regulation, becomes aware of facts which might have affected his report, the commissioner notes the obligation of the accountant to take the action prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants ((1990)), incorporated by reference and available from the Kentucky Office of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 10. Communication of Internal Control Related Matters Noted in an Audit[Report on Significant Deficiencies in Internal Controls].

(1)(a) In addition to the annual audited financial statements, each insurer shall furnish the commissioner [executive director] with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit.

(b) The communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weaknesses as of December 31 immediately preceding in the insurer’s internal control over financial reporting noted by the accountant during the course of their audit of the financial statements.

(c) If no unremediated material weaknesses were noted, the communication shall state that none were found.

(2) An insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses. If the description is not described in the accountant’s communication, the description shall be included as a significant deficiency in the internal control structure noted by the accountant during the audit. SAS 60, "Communication of Internal Control Structure Matters Noted in an Audit (AU sec. 235 of the Professional Standards of the American Institute of Certified Public Accountants)" [1990], available from the Kentucky Office of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays, requires an accountant to communicate significant deficiencies (known as “reportable conditions”) noted during a financial statement audit to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the office within sixty (60) days after the filing of the annual audited financial statement. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant’s report.

Section 11. Accountant’s Letter of Qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the insurer's annual audited financial report, a letter, signed by the accountant, that the accountant is independent with respect to the insurer and conforms to the standards of the accountant’s profession as contained in [the Code of Professional Conduct and Professional Standards] of the American Institute of Certified Public Accountants (January 1, 1988) and statutes, administrative regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky set forth in KGS Chapter 325 and 201 KAR Chapter 1(1991), both available from the Kentucky Office of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays, or similar code.

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing in this administrative regulation prohibits the accountant from utilizing staff as the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(3) That the accountant understands the annual audited financial report, that the accountant's opinion on it will be filed in compliance with this administrative regulation, and that the commissioner [executive director] will be relying on this information in monitoring and administrative regulation of the financial position of insurers.

(4) That the accountant consents to the requirements of Section 12 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner [executive director], his designee, or his appointed agent, the
work papers;
(5) A representation that the accountant is properly licensed by
an appropriate state licensing authority and is a member in good
standing of the American Institute of Certified Public Accountants;

Section 12. Availability and Maintenance of Independent Certified
Public Accountant Work Papers. (1) Every insurer required to
file an audited financial report pursuant to this administrative regu-
lation shall require the accountant to make available for review by
department[office] examiners all work papers prepared in the con-
duct of the accountant’s audit[examination] and any communi-
tications related to the audit between the accountant and the insurer,
at the offices of the insurer, at the department[office] of the office,
or any other reasonable place designated by the commissioner.
The insurer shall require that the accountant retain the audit work papers and communications until the depart-
ment[office] has filed a report on examination covering the period
of the audit, but no longer than seven (7) years from the date of
the audit report.

(2) In the conduct of the periodic review by department[office]
examiners described in subsection (1) of this section, it shall be
agreed that photocopies of pertinent audit work papers may be
made and retained by the department[office]. Reviews by the de-
partment[office] examiners shall be conducted in a manner that
all working papers and communications obtained during the course
of shall be afforded the same confidentiality as other examination
work papers generated by the department[office].

Section 13. Requirements for Audit Committees. This section
shall not apply to foreign or alien insurers licensed in this state or
guarantees that is a SOX compliant entity, or direct or indirect
wholly-owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the
appointment, compensation and oversight of the work of any ac-
countant, including resolution of disagreements between manage-
ment and the accountant regarding financial reporting, for the pur-
pose of preparing or issuing the audited financial report or related
work pursuant to this administrative regulation. Each accountant
shall be appointed directly to the audit committee.

(2) Each member of the audit committee shall be a member of
the board of directors of the insurer or a member of the board of
directors of an entity elected pursuant to subsection (5) of this
section and subsection (3)(d) of this administrative regulation.

(3)(a) A member of the audit committee shall not, other than in
his or her capacity as a member of the audit committee, be a
director or any other board committee, accept any consulting
advisory or other compensation fee from the entity or be an affili-
ated person of the entity or any subsidiary.

(b) Notwithstanding paragraph (a) of this subsection, if law
requires board participation by otherwise nonindependent mem-
bers, that law shall prevail and the members may participate in the
audit committee and be designated as independent for audit com-
mittee purposes, unless they are an officer or employee of the
insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be indepen-
dent for reasons outside the member’s reasonable control, that
person, with notice by the responsible entity to the state, may re-
main an audit committee member of the responsible entity until the
date of:

(1) The next annual meeting of the responsible entity or
(b) One year from the occurrence of the event that caused the
member to be no longer independent.

(5)(a) To exercise the election of the controlling person to des-
signate the audit committee for purposes of this administrative
regulation, the ultimate controlling person shall provide written
notice to the commissioners of the affected insurer.

(b) Notification shall be made timely prior to the issuance of the
statutory audit report and shall include a description of the basis for
the election.

(c) The election can be changed through notice to the commis-
sioner by the insurer which shall include a description of the basis
for the change.

(d) The election shall remain in effect for perpetuity, until res-
cinded.

(6)(a) The audit committee shall require the accountant that
performed for an insurer any audit required by the administrative
regulation to timely report to the audit committee in accordance
with the requirements of SAS 114, "The Auditor’s Communication
With those Charged With Governance", or its replacement includ-
ing:

1. All significant accounting policies and material permitted
practices;

2. All material alternative treatments of financial information
within statutory accounting principles that have been discussed
with management officials of the Insurer, ramifications of the use
of the alternative disclosures and treatments, and the treatment pre-
ferred by the accountant;

3. Other material written communications between the account-
ant and the management of the insurer, including any manage-
ment letter or schedule of unadjusted differences.

(b) If an insurer is a member an insurance holding company
system, the reports required by paragraph (a) of this subsection
may be referred to the audit committee on an aggregate basis for
insurers in the holding company system, provided that any sub-
stantial differences among insurers in the system are identified to
the audit committee.

(7)(a) The proportion of independent audit committee members
shall be at least or exceed the following criteria:

1. For prior calendar year direct written and assumed pre-
miums between $0 and $300,000,000; no minimum requirements;

2. For prior calendar year direct written and assumed pre-
miums over $300,000,000 to $500,000,000; fifty (50) percent or
more of members shall be independent; and

3. For prior calendar year direct written and assumed pre-
miums over $500,000,000; seventy-five (75) percent of members
shall be independent.

(b) Notwithstanding subsection (7)(a) of this section, the com-
misssioner may require the audit committee’s board to enact im-
provements to the independence of the audit committee member-
ship if the insurer:

1. Is in a risk-based capital action level in accordance with 806
KAR 3:190 or

2. Meets one or more of the standards of an insurer deemed to be
in hazardous financial condition or otherwise exhibits qualities of
a troubled insurer as set forth in KRS 302.002.

(c) An insurer with less than $500,000,000 in prior year direct
written and assumed premiums may structure its audit committee
with at least a supermajority of independent audit committee mem-
bers

(d) For purposes of subsection (7)(a) of this section, prior ca-
ler year direct written and assumed premiums shall be the
combined total of direct premiums and assumed premiums from
nonaffiliates for the reporting entity.

(8)(a) An insurer with direct written and assumed premiums,
excluding premiums reinsured with the Federal Crop Insurance
Corporation and Federal Flood Program, less than $500,000,000
may make application to the commissioner for a waiver from the
requirements of this section based upon hardship.

(b) The insurer shall file, with its annual statement filing,
the approval for relief from this section with the states that it is licensed
in or doing business in and the National Association of Insurance
Commissioners.

(c) If the nondomestic state accepts electronic filing with the
National Association of Insurance Commissioners, the insurer shall
file the approval in an electronic format acceptable to the National
Association of Insurance Commissioners, via the web site
https://www2.naic.org/servet/index.html

Section 14. Conduct of Insurer in Connection with the Prepara-
tion of Filings, Reports and Documents. (1) A director or officer
of an insurer shall not, directly or indirectly:

(a) Make or cause to be made a materially false or misleading
statement to an accountant in connection with any audit, review or
communication required under this administrative regulation;

(b) Permit, or cause another person to permit to state, any
material fact necessary in order to make statements made in light

- 1309 -
of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this administrative regulation.

(2) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this administrative regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any of the following actions to coerce, manipulate, mislead or fraudulently influence an accountant with respect to the professional engagement period:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles as required by KRS 304.3-241, generally accepted auditing standards, or other professional or regulatory standards;

(b) To not perform, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) To not withdraw an issued report;

(d) To not communicate matters to an auditor's audit committee.

Section 15. Management's Report of Internal Control over Financial Reporting (1)(a) Every insurer required to file an audited financial report pursuant to this administrative regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Crop Insurance Program, of $500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting.

(b) The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit.

(c) Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

Notwithstanding the premium threshold in subsection (1)(a) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer:

1. Is in any risk-based capital level In accordance with 304.05 MAR 3:1901;

2. Meets one or more of the standards of an insurer deemed to be in hazardous financial condition in accordance with KRS 304.2-065.

3. An insurer or a group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum In satisfaction of the requirements of this section if these internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements were included in the scope of the Section 404 Report:

(a) The insurer or group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum In satisfaction of the requirements of this section if these internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements were included in the scope of the Section 404 Report:

(b) Part of a holding company system and its parent is directly subject to Section 404.

(c) Not directly subject to Section 404, but is a SOX compliant entity.

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity.

4. Management's report of internal control over financial reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting.

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of internal control over financial reporting.

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded.

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting.

(f) A statement regarding the inherent limitations of internal control systems and

(g) Signatures of the chief executive officer and the chief financial officer.

5. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

6. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of the documentation, in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation.

Section 16. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner[executive director] may grant an exemption from compliance with any and all provisions of this administrative regulation if the commissioner[executive director] finds, upon review of the application, that compliance with this administrative regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. Upon denial of an insurer's written request for an exemption from this administrative regulation, the insurer may request a hearing on its application for an exemption pursuant to KRS 304.2-310 (Chapter 304).

(2) Domestic insurers retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall comply with this administrative regulation for the year ending December 31, 2010[1991], and each year thereafter unless the commissioner[executive director] otherwise requires.

3. Domestic insurers not retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner[executive director] permits otherwise:

(a) As of December 31, 2010[1991], file with the commissioner an audited financial report[executive director (2)]

1. Report of independent certified public accountant;

2. Audited balance sheet; and

3. Notes to audited balance sheet.

(b) For the year ending December 31, 2010[1991], and each year thereafter, these insurers shall file with the commissioner[executive director] all reports and communication required by this administrative regulation.

(c) Foreign insurers shall comply with this administrative regulation for the year beginning January 1, 2010[1991] and each year thereafter unless the executive director otherwise permits.

(5) The requirements of Section 13 of this administrative regulation shall be effective January 1, 2010.

(b) An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation, is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premium is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the
Independence requirements in Section 6 of this administrative regulation.

(c) An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements in Section 13 of this administrative regulation.

(6)(a) The requirements of Section 15 of this administrative regulation shall be effective beginning with the reporting period ending December 31, 2010 and each year thereafter.

(c) An insurer or group of insurers that is not required to file an annual audit report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded but not earlier than December 31, 2010 to file an annual audit report.

(c) An insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements in Section 4 of this administrative regulation.

Section 17(14) Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be defined as the annual statement of total business in the manner filed by these insurers with their [demetary] supervisory authority duly authorized by an independent certifier public accountant.

(2) For Canadian and British insurers, the latter required by Section 5 of this administrative regulation shall state that the accountant is aware of the requirements relating to the annual audited financial report[statement] filed with the [commissioner][executive director] pursuant to Section 3 of this administrative regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 3 of this administrative regulation.

Section 18. Incorporation by reference. (1) The following material is incorporated by reference.


(b) AU Section 561, "Subsequent Discovery of Facts Existing at the Date of the Auditor's Report" 1996 Professional Standards of the American Institute of Certified Public Accountants.

(c) SAS 114, "The Auditor's Communication With Those Charged with Governance", 2007, American Institute of Certified Public Accountants.


(e) SAS 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence", 2007, American Institute of Certified Public Accountants.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 425 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://doi.pcr.gv.ky.gov/kyd.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2008, at 9 a.m. (ET) 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 before November 17, 2008 five working days prior to the hearing date of their intention to attend. If 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 December 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: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires annual filing of audited financial reports by insurers.

(b) The necessity of this administrative regulation: This administrative regulation will allow the Department of Insurance to ensure timely filing of the financial condition of insurers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides the authority for the executive director to require annual filing of audited financial reports by insurers. This administrative regulation requires the annual filing of audited financial reports by insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will improve the Department of Insurance's oversight of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants.

(2) If 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 based on the National Association of Insurance Commissioners' (NAIC) Annual Financial Reporting Model Regulation. The amendment adopts the updates to that model and amends agency names in accordance with EO 2008-507.

(b) The necessity of the amendment to the administrative regulation: These amendments are necessary to adopt the updates to the NAIC Annual Financial Reporting Model Regulation, which is a requirement for financial accreditation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides the authority for the executive director to require annual filing of audited financial reports by insurers. This amendment requires communication of internal control related matters noted in an audit and the filing of a report by management of Internal control over financial reporting.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will improve the Department's financial oversight of insurers in that the provisions are intended to strengthen corporate governance, auditor independence and accountability in financial reporting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts approximately 2,200 licensed insurers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation: If new, or by the change, if it is an amendment: This amendment will require the filing of additional financial reports with the annual audited financial statement. Related to internal controls.

(5) Provide an estimate of how much it will cost to implement this regulation:
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [provides that] the Executive Director of Insurance [may] make reasonable [rules and] 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. 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 requires filing of group certificates issued for delivery to residents of Kentucky under a group policy dividend or issued outside this state.

Section 1. Definitions. (1) "Association" means:
(a) An entity that is organized with a constitution and bylaws and is maintained in good faith for purposes other than obtaining insurance for its members;
(b) A trust;
or
(c) An employer-organized association as defined in KRS 304.17A-005(12).
(2) "Commissioner" means the Commissioner of Insurance.

Section 2. Filing Requirements. (1) A certificate of a group policy issued or delivered to a Kentucky resident through an association outside Kentucky shall be filed and approved by the commissioner if substantially all of the premiums of the group policy are paid by the persons covered under the group policy.
(2) A certificate as identified in subsection (1) of this section shall be:
(a) Pursuant To KRS 304.14-120; and
(b) In accordance with 806 KAR 14-007 [Group certificate issued for delivery to residents of the state under any group policy issued and delivered on or after August 6, 1978 to an association outside this state, under which group policy substantially all of the premiums are payable by the insured individual members, shall be filed with and approved by the executive director.]

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 7, 2008
FILED WITH LRC: October 10, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2008 at 9 a.m. (ET) 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 November 18, 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 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 December 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, 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 requires filing of group certificates issued for delivery to residents of Kentucky under a group policy delivered or issued outside this state.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide consumer safeguards when out of state group associations issue certificates to Kentucky residents.
(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. This administrative regulation requires filing of group certificates issued for delivery to residents of Kentucky under a group policy delivered or issued outside this state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by providing definitions and clarifying the requirement for out of state associations to file certificates with the Department of Insurance.

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

(a) How the amendment will change the existing administrative regulation: This amendment will clarify that the filing requirements also apply to group policy certificates that are issued to Kentucky residents through an out of state trust.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that certificate filing requirements also apply to group policy certificates that are issued to Kentucky residents through an out of state trust.

(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 the application of a certificate filing requirement for out of state trusts. Several statutes within the Kentucky Insurance Code apply to certificates and these statutes do not limit the application of statute to certificates issued by an association; therefore, this amendment clarifies the application of a certificate filing requirement for out of state trusts.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the filing requirements for group certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects insurers who issue policies and certificates through out of state trusts and associations. In the four years, the Kentucky Department of Insurance has reviewed approximately 40 certificates issued through an out of state trust or association.

(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 insurers are currently complying with the existing administrative regulation, no impact is expected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department sent a draft version of this administrative regulation to twenty-five (25) Insurers who have filed these group certificates with the Department in the past four years. Only three insurers commented on the draft. One insurer commented that costs associated with implementation would be limited to necessary staff time to amend existing forms and DOI filing fees (i.e., $500 to 700 for approximately 15 forms). Another insurer had questions on the draft and the Department responded to these questions. The last insurer commented that the company does not anticipate that the proposed amendment would impose any new or increased regulatory compliance costs and that the company does not anticipate incurring any additional costs to comply with the amendment. Since the majority insurers currently submit these certificates to the Department of Insurance, the Department does not anticipate 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 more informed of filing requirements for group certificates for out of state trusts and associations and in compliance 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 costs. 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 be used for the implementation of 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 requirements. The amendment will apply equally to all group certificates issued to Kentucky residents under a group policy issued to an out of state association or trust.

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 filing requirement 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. This administrative regulation requires filing of group certificates licensed for delivery to residents of Kentucky under a group policy delivered or issued outside this state.

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

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

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

(c) How much will it cost to administer this program for the first year? The 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.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

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

606 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

577, 304.17A-578, 304.17A-728, 304.17A-599

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-
527(1)

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-
731, signed July 8, 2004, created the Office of Insurance.] KRS
304.2-110(1) authorizes the executive director to promulgate rea-
sonable 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-527(1) requires that
the office promulgate administrative regulations regarding the
manner and form of required filings of sample copies of provider
agreements. EO 2003-507, effective June 16, 2003, established
the Department of Insurance and the Commissioner of Insurance
as head of the department. This administrative regulation estab-
lishes the filing requirements of provider agreements, subcontra-
tor agreements, and risk sharing arrangements (these require-
ments).

Section 1. Definitions. (1) "Commissioner" means the Commiss-
ioner of Insurance.

(2) "Covered person" is defined in KRS 304.17A-500(3).

(3) "Department" means the Department of Insurance.

(4) [Added by 2004 Amended.]

(5) "Insurer" is defined in KRS 304.17A-500(8).

(6) "Managed care plan" is defined in KRS 304.17A-500(9).

(7) "Nonparticipating provider" is defined in KRS 304.17A-
574(4).

(8) "Participating health care provider" is defined in KRS
304.17A-500(10).

(9) [Added by 2004 Amended.]

(10) [Deleted by 2004 Amended.]

(11) [Added by 2004 Amended.]

(12) Subcontract agreement is defined in KRS
304.17A-500(13).

(13) [Added by 2004 Amended.]

(14) [Added by 2004 Amended.]

Section 2. Filing Requirements. (1) A sample copy of the fol-
lowing shall be filed with the commissioner[executive director] at
least ninety (90) [seventy (70)] days before its [intended] use:

(a) Provider agreement;

(b) Risk[-]sharing arrangement, and

(c) Subcontract agreement.

(2) A filing pursuant to subsection (1) of this section shall:

(a) Include:

1.[a] A compensation arrangement, including a description of the:

a.[1] Payment methodology; and

b.[2] Payor as defined in the agreement; and

2.[b] Any attachment, exhibit, or addendum to the items listed
in subsection (1) of this section;

3.[c] A filing submitted to the executive director shall include

(a) A completed and signed Face Sheet and Ventilation Form
HIPCRAF-1, incorporated by reference in 806 KAR 17:005; and

4.[d] A filing fee, [including as follows]:

a.[1] Twenty-five ($25) dollars for a provider agreement or sub-
contract agreement filing;

b.[2] Fifty ($50) dollars for a risk[-]sharing arrangement filing.

5.[e] A filing required pursuant to subsection (1) of this sec-
tion shall:

(a) Not be considered complete until the [all] information re-
quired by paragraph (a) of this subsection[is administrative reg-
ulation] is received by the department/of Insurance]; and

(b) Be disapproved if a complete filing is not received within
sixty (60) days of the date of filing.

(3) [Added by 2004 Amended.]

(a) If a managed care plan amends an existing provider
agreement or subcontract agreement, which has previously
filed with the commissioner[executive director], affecting any
requirements of this administrative regulation, the managed care
plan shall submit:

(a) An amended filing at least ninety (90) [seventy (70)] days be-
fore its [intended] use; and

(b) A letter which [the] identifies and explains each amend-
ment.

(4)[[Added by 2004 Amended.]

(a) [Added by 2004 Amended.]

(b) [Added by 2004 Amended.]

(c) [Added by 2004 Amended.]

Section 3. Provider Agreement Requirements. A sample copy of a provider agreement filed with the commissioner[executive
director] shall:

(1) Comply with the requirements of KRS 304.17A-527(1);

(2) Comply with the requirements of KRS 304.17A-729; and

(3) Not include the following provisions:

[a][A] Most-favored nation provision in accordance with KRS
304.17A-560;

[b][B] Limitation on disclosure provision in accordance with
KRS 304.17 A-530;

(c)[C] Condition of participation provision in accordance with
KRS 304.17A-150(4); and/or

(d)[D] Mandatory use of hospitalist provision in accordance with
KRS 304.17A-532(2).

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement, which [the] is part of a provider
agreement or risk[-]sharing arrangement shall:

(1) Be filed with the commissioner[executive director] by the
managed care plan or insurer in conjunction with the provider
agreement or risk[-]sharing arrangement; and

(2) Meet the requirements of Section 3 of this administrative
regulator.

Section 5. Risk[-]Sharing Arrangement Requirements. (1) A sample copy of a risk[-]sharing arrangement filed pursuant to Sec-
tion 2 of this administrative regulation shall:

(a) Meet the requirements of Section 3 of this administrative
regulation; and

(b) Include a Risk[-]Sharing Arrangement Information Sheet
HIPCRAF-1, incorporated by reference in 806 KAR 17:005.

(2) On or before September 1 of each calendar year, an insur-
er shall file with the commissioner the HIPCRAF-1, incorporated by
reference in 806 KAR 17:005 for each risk[-]sharing arrangement which is in effect at that time.
Section 6: Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) *Face Sheet and Ventilation Form HiPMC F-1, (795)*; and
   (b) *Risk Rating Arrangement Information Sheet HiPMC F-1*, (796).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at http://doi.pky.gov/kentucky.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 7, 2008
FILED WITH LRC: October 10, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 2008, five working days prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 1, 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: Mela Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mela Rivera

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the filing requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(2) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to insurers relating to the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(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 or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-527(1) requires the office to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes the filing requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) The amendment will change this existing administrative regulation: This amendment will correct citations and definitions, change occurrences of executive director and office to conform to EO 2008-507, revise sections to clarify language and requirements, incorporate provisions from HB 440 enacted by the 2008 General Assembly, delete incorporated by reference material, and make other changes to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate provisions from HB 440, enacted by the 2008 General Assembly, correct citations and definitions, change occurrences of executive director and office to conform to EO 2008-507, and clarify language.

(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 Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-527(1) requires the office to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This amendment incorporates provisions from HB 440, enacted by the 2008 General Assembly, corrects citations and definitions, incorporates changes from EO 2008-507, revises sections to clarify language and requirements, deletes incorporated by reference materials, and makes other changes to comply with the drafting requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by correcting several definitions, revising sections to clarify language and requirements, and making other changes to comply with the drafting requirements of KRS Chapters 304.2 and 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately twenty (20) health insurers doing business 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 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: Since health insurers are currently required to comply with the existing administrative regulation and the proposed amendments are minor or for clarification, any impact to insurers is expected to be minor. These insurers will, however, be required to file provider and subcontractor agreements and risk sharing arrangements thirty (30) days earlier than the timeline for filing before this proposed amendment to comply with KRS 304.17A-577(2).

(b) If complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The resulting benefits are that health insurers will be better informed of the requirements necessary to comply with this administrative regulation and the provisions of 2008 HB 440, which are codified under KRS 304.17A-577.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: DOI does not anticipate any direct or indirect costs relating to the initial implementation of the amendment to this administrative regulation.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs relating to the ongoing implementation of the amendment to this administrative regulation.

(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 DOI.

(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: DOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment to an existing administrative regulation does not establish new fees, nor does this amendment directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Insurers that do not offer a managed care plan are not required to file sample copies of provider agreements pursuant to KRS 304.17A-527. This amendment to the administrative regulation will clarify the requirements for insurers that are required to file provider and subcontractor agreements and risk sharing arrangements.

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 (DOI) is promulgating this administrative regulation to clarify the requirements of health insurers for filing provider and subcontractor agreements and risk sharing arrangements. This clarification will not produce a significant impact to DOI.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-11(3) 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-527(1) requires the office to promulgate administrative regulations regarding the manner and form of required claimings of sample copies of provider agreements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue in 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 the first year? This administrative regulation will not generate significant revenue in the first year for state or local governments.

(c) How much will it cost to administer this program for the first year? DOI does not anticipate any significant costs associated with the implementation of this amendment to an existing administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? DOI does not anticipate any costs associated with the implementation of this administrative regulation 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:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division Of Enforcement
(Amendment)

811 KAR 1:075. Racing and track rules.


STATUTORY AUTHORITY: KRS 230.215(2), 230.280(3), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission (Authority) to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.330(1) authorizes the commission (Authority) to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. EO 2008-668, effective July 3, 2008, abolished the Kentucky Horse Racing Authority and established the Kentucky Horse Racing Commission. This administrative regulation establishes track rules and requirements concerning proper conduct.

Section 1. A leading horse shall be entitled to any part of the track. After selecting a position in the home stretch, a driver of a horse shall not do any of the following things, which shall be considered violation of driving rules:

1. Change either to the right or left during any part of the race if another horse is so near the driver that in altering positions, the driver compels the horse behind to shorten strides, or causes the driver of any other horse to pull the horse out of his stride;

2. Jostle, strike, hook wheels, or interfere with another horse or driver;

3. Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;

4. Sway in and out or pull up quickly;

5. Crowd a horse or driver by "putting a wheel under him";

6. "Cut a horse out" or "cut down in front of him", take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act which constitutes "helping";

7. Allow a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;

8. Lay off a normal pace and leave a hole if it is well within the horses' capacity to keep the hole closed;

9. Commit an act which impedes the progress of another horse, or causes the horse to "break";

10. Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner which interferes with another horse or causes the horse to change course or take back;

11. Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race;

12. Whip under the arch of the sulky;

13. Cross the inside limits of the course;

14. Fail to set or maintain a pace comparable to the class of the horses being raced, including traveling an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race; or

15. Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

Section 2. (1) A horse or a horse's sulky that leaves the course by brushing, running over, or going inside of a pylon demarcation shall have violated this administrative regulation, if, the pylons that horse may be penalized by a disqualification if in the opinion of the judges:

(a) The action results in the horse gaining an unfair advantage over other horses in the race;

(b) The action helps the horse improve its position in the race; or

(c) The driver goes inside the pylons and does not immediately correct position.

(2) A horse using the inside to pass shall have complete clearance of the pylons.

(3) A driver striking pylons but not gaining an unfair advantage shall be cited for a violation of this administrative regulation unless he was forced to strike the pylons by circumstances beyond his control.

(4) If an act of interference causes a horse or part of a horse's sulky to be in violation of this administrative regulation and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Complaints, Reports of Interference. (1) Complaints.

- 1316 -
(a) A complaint by a driver relating to driving or other misconduct during a heat shall be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury.

(b) A driver desiring to enter a claim of foul or other complaint of violation of the rules shall, before dismounting, indicate to the judge the driver's intention to enter a claim or complaint, and immediately upon dismounting, the driver shall proceed to the telephone or judges' stand where the claim, objection, or complaint shall be immediately entered.

(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has been entered and considered.

(2) Report of Interference. A driver shall report any interference to himself or herself or to the driver's horse by another horse or driver during a race to the designated official.

Section 4. If a violation set forth in Section 1 or 2 of this administrative regulation is committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if, in their opinion, the violation may have affected the finish of the race. Otherwise, penalties shall be applied individually to the drivers of any entry.

Section 5. Unsatisfactory Drive; Fraud. (1) A heat in a race shall be fairly contested by each horse in the race and each horse shall be driven to a finish.

(2) It shall be a violation of this administrative regulation for a horse to be driven:

(a) With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;

(b) In an inconsistent manner with the intent to improperly manipulate the outcome of a race; or

(c) To perpetrate or aid in a fraud.

(3) The judges shall substitute a competent and reliable driver at any time prior to the start of the heat or race if the judges have reason to doubt the competence or reliability of the original driver.

(4) A substitute driver shall be paid from the purse money due to the horse.

Section 6. A driver may be removed and another driver substituted after the positions have been assigned in a race if, in the opinion of the judges, a driver:

(1) Is unfit or incompetent to drive;

(2) Refuses to comply with the directions of the judges; or

(3) Is reckless in his or her conduct and endangers the safety of horses or other drivers in the race.

Section 7. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled did not finish.

Section 8. (1) Loud shouting or other disruptive or distracting improper conduct shall be forbidden during a race.

(2) A driver shall be allowed to remove a foot from the stirrup temporarily for the purpose of pulling earplugs.

Section 9. Whipping. (1)(a) A driver shall be allowed a whip not to exceed four (4) feet—plus a snapper not longer than six (6) inches.

(b) A snapper of any kind shall be prohibited.

(2) A person shall not use any goading device, chain or mechanical device, or appliance, other than the ordinary whip or crop upon a horse in any race, training exercise, or while on association grounds.

(3)(e) The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop during a race, training exercise, or while on association grounds shall be prohibited.

(b) A driver shall use a whip only in the conventional manner, by holding the handle and whipping the horse only above the shafts.

(c) Welts, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.

(d) A driver shall be prohibited from:

1. Whipping a horse under the arch or shafts of the sulky;

2. Kicking a horse;

3. Punching a horse;

4. Jabbing a horse;

5. Using the whip so as to interfere with or cause disturbance to any other horse or driver in a race;

6. Whipping a horse after a race;

7. Whipping a horse that is exhausted or no longer in contention to win the race.

(3)[(e)] A driver shall keep a line in each hand and both hands shall stay in front of the body of the driver from the start of the race until the finish of [top-of-the-home stretch-finishing] the race. The left line shall be held in the left hand and the right line shall be held in the right hand.

Section 10. (1) A horse shall not wear hopples in a race unless it starts in hopples in the first heat.

(2) Having so started, the horse shall continue to wear them to the finish of the race.

(3) A person removing or altering a horse's hopples during a race, or between races, for the purpose of fraud, shall be considered to be in violation of this administrative regulation.

(4) A horse habitually wearing hopples shall not be permitted to start in a race without them unless the horse performs satisfactorily in a qualifying race.

(5) A horse habitually racing free-legged shall not be permitted to wear hopples in a race unless the horse performs satisfactorily in a qualifying race.

(6) A horse shall not be permitted to wear a head pole protruding beyond its nose.

Section 11. Breaking. (1) If a horse breaks from its gait in trotting or pacing, the driver shall at once, where clearance exists, take the horse to the outside and pull it to its gait.

(2) The following shall be considered a violation of this section:

(a) Failure to properly attempt to pull the horse to its gait;

(b) Failure to take to the outside where clearance exists;

(c) Failure to lose ground by the break; or

(d) Failure to prevent extended break.

(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.

(4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.

(5) If a horse or driver's actions cause another horse to be off stride at the wire, the offending horse shall be placed behind the horse with whom it interfered after all other placements have been made.

(6) A horse making a break, which causes interference with other contesting horses, shall be placed behind all offended horses.

(7) The judges shall set a horse back one (1) or more places if a violation of this section has been committed.

Section 12. It shall be the duty of one (1) of the judges to call out every break made, and the clerk shall at once note the break and its character in writing.

Section 13. The time between separate heats of a single race shall be no less than forty (40) minutes. A heat shall not be called after sunset if the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 14. Horses called for a race shall have the exclusive right of the course, and other horses shall vacate the track at once, unless permitted to remain by the judges.

Section 15. If any horse in the current program fails or runs uncontrollably on the track or is involved in an accident after starting to warm up, that horse shall be permitted to start only after examination and approval by the commission[Authority] veterinarian.
Section 16. If an accident occurs, the judges shall allow adequate time in between posts to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements.

Section 17. A driver shall be seated in his sulky at the finish of the race or the horse shall be placed as not finishing.

Section 18. It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission [Authority]. If necessary, the presiding judge may order the use of mud guards which shall be provided by the owners or trainers.

Section 19. Sulky. A sulky shall not be used in a race, unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2005, Rule 18, Section 25, "Sulky Performance Standards".

Section 20. Helmets. A protective helmet, securely fastened under the chin and meeting the Snell Foundation 2000 Standard for Protective Headgear for Use in Harness Racing, shall be worn at all times on the premises of an association if:

1. Racing, parading, or warming up a horse prior to racing; or
2. Jogging, training, or exercising a horse at any time.

Section 21. Safety Vests. (1) A safety vest shall be worn if racing, parading, or warming up a horse prior to racing.

(2) A safety vest shall:

(a) Cover the torso, front and back, from the collar bone to the hip bone;
(b) Be of uniform material and thickness over the whole of the vest except for:
1. Localized variation due to pattern, as, for example, quilting;
2. Thinner areas to aid fit, as, for example, under the arms, at fastenings, and at edges; and
3. Thicker areas in regard to particularly sensitive areas of the body, for example, the spine; and
(c) Equal or exceed a minimum shock absorbance rating of five (5) according to the specifications established by the British Equestrian Trade Association (BETA), which are as follows:
1. Use a critical head apparatus to measure the maximum deceleration on impact of a striker consisting of a spherical indenter weighing five and nine-tenths (5.9) plus or minus 0.05 kilogram with a diameter of 215 plus or minus two (2) millimeters;
2. Condition the vest and the striker for a minimum of three (3) hours at twenty-three (23) degrees (plus or minus two (2) degrees) Centigrade;
3. With the vest lying on a smooth, flat, massive concrete base with the inside of the vest facing the striker and positioned so that the striker will impact on an area of typical thickness, not reinforced by additional material, raise and release the striker starting at a height of two-tenths (0.2) meters and increasing the height by increments of two-tenths (0.2) meters to a height which will result in a deceleration of over 300 gravity units (1g+6.81 ms), as measured by recording the signal from an accelerometer through the impact from the time before the striker impacts the vest until the accelerometer returns to the same level as before the impact;
4. Record the gravity units measured at each height increment on a line graph which has the gravity units in ascending order as the vertical axis and the release height in meters in ascending meters as the horizontal access;
5. Plot the height in meters at which the deceleration reached 300 gravity units; and
6. Multiply the height obtained in paragraph 5 of this subsection by ten (10) to calculate the shock absorbance rating.

Section 22. Penalties. (1) A horse that violates Section 1 or 2 of this administrative regulation shall:

(a) Be placed back one (1) or more positions in the heat or dash behind the horse with which the horse interfered;
(b) Be disqualified from receiving any winnings, if a horse is prevented from finishing as a result of the violation; or
(c) Be placed last among finishing horses, if a horse which the violating horse interfered with fails to finish the race due to a separate and unrelated incident.

(2)(a) A person or association that violates any section of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1), unless, in the opinion of the judges, the violation was committed with the intent to alter or affect the outcome of a race or with the intent to defraud, in which case the person or association shall have committed a Category 3 violation and be subject to the penalties set forth in 811 KAR 1:095, Section 4(3).

(b) A person in violation of section 9(1), (2), or (3) of this administrative regulation shall be subject to a penalty of suspension or revocation of licensing privileges from three (3) days to one (1) year. The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $100 to $20,000, in proportion to the seriousness of the violation.

(c) A person in violation of section 9(4) of this administrative regulation shall be subject to the following penalties:

1. For a first offense, a suspension or revocation of licensing privileges from ten (10) to thirty (30) days. The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $100 to $10,000, in proportion to the seriousness of the violation.

2. For a second offense, a suspension or revocation of licensing privileges from twenty (20) to sixty (60) days. The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $10,000, in proportion to the seriousness of the violation.

3. For a third offense, a suspension, or revocation of licensing privileges from forty (40) to 120 days. The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $18,000, in proportion to the seriousness of the violation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Rules and Regulations of the United States Trotting Association, 2005, Rule 18, Section 25, "Sulky Performance Standards"; and
(b) The Snell Memorial Foundation's '2000 Standard for Protective Headgear for use in Harness Racing".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission [Authority], 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission [Authority] Web site, www.khra ky gov.

ROBERT M. BECK, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 14, 2008 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, November 24, 2008, at 10 am, at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Monday, November 17, 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 be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed ad-
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

Administrative regulation. Written comments shall be accepted until Monday, December 1, 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 Forgy, General Counsel
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

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the rules governing the actual running of a standardbred horse race. It prohibits certain types of driving activities, imposes safety requirements, and sets forth the penalties for violation of these rules.
(b) The necessity of this administrative regulation: The regulation is necessary to ensure that a standardbred horse race is conducted in a safe and fair manner.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation authorizes the requirements and requirements concerning the running of a standardbred horse race.
(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 utilized in conjunction with standardbred race horses.

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 modifies Section 9, which concerns the use of whips. The amendment bars the use of a sniper on a whip, which is a small nylon strip on the end of the whip. The amendment is also intended to prevent drivers from holding reins in one hand while whipping the horse with the other hand. The rule requires the driver to keep one rein in each hand at all times, which prevents the driver from drawing his or her arm back to use the whip in an overly-aggressive manner. The amendment sets forth enhanced penalties for the violation of these rules.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that no driver shall use a whip in a manner which harms or causes excessive pain to a horse.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing. The amendment addresses an important safety issue concerning horses, specifically amending the rule concerning the use of whips.

How the amendment will assist in the effective administration of the statutes: The amendment gives positive guidance as to the manner in which whips may be used in a standardbred horse race.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Standardbred drivers will be required to conform to this regulation. There are currently 367 persons licensed to drive a standardbred horse in the state of Kentucky.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by any implementation or amendment: Drivers will be required to discontinue the use of snappers on whips, and will be required to keep their hands on the reins during the running of the race.
(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.

As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will protect horses by preventing the use of whips in an excessively forceful manner.

Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if necessary, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish or increase any fees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No 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 to be in effect. The regulation will not impose additional costs upon any government agency.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

RELATES TO: KRS 61,970-61,992, 216.2920-216.2929
STATUTORY AUTHORITY KRS: 194A.050(1), 216.2923(2)(c), 216.2924(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923 mandates that the Cabinet for Health and Family Services publish and make available information relating to the health care delivery and finance system that is in the public interest. KRS 216.2927 mandates that personally identifying data collected by

- 1319 -
the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 902 KAR 19:020, while maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions. (1) "Cabinet" is defined by [set] KRS 216.2920(2).
(2) "Data" means the information collected pursuant to 902 KAR 19:020(e) that information described at length in KRS 216.2927(3) to (4).
(3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service/ambulatory surgery, emergency department, or observation stay billing record contained in a data file.
(4) "Health care provider" is defined by [set] KRS 216.2920(5).
(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data as defined for purposes of this administrative regulation.
(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. (1) Notwithstanding the provisions of KRS 216.2927(3) regarding single copies of aggregate data, encounter-level (hospital-discharge) data shall be released in an (411) of the following standard file formats described in the table below:

| Encounter-Level Standard File Format – Data Element Contained in the File if Information is Available |
|---------------------------------|---------------------------------|
| File Type                       |                                 |
| Provider ID                     |                                 |
| Quarter & Year of Discharge     |                                 |
| Patient Gender                  |                                 |
| Patient Age Group               |                                 |
| Patient Race/Ethnicity          |                                 |
| Sexual Orientation              |                                 |
| Discharge Status                |                                 |
| Indication                     |                                 |
| Procedure 1 (Primary)           |                                 |
| Procedure 2                     |                                 |
| Procedure 3                     |                                 |
| Procedure 4                     |                                 |
| Procedure 5                     |                                 |
| Procedure 6                     |                                 |
| Length of Stay                  |                                 |
| Total Charges                   |                                 |
| Discharge Status                |                                 |
| Payer 1 (Primary)               |                                 |
| Payer 2                         |                                 |
| Payer 3                         |                                 |
| Diagnostic related group        |                                 |
| Medicare Services – Diagnostic related group |               |
| Major Diagnostic Category       |                                 |
| Diagnosis Version Qualifier     |                                 |
| Event Code 1                    |                                 |
| Event Code 2                    |                                 |

Section 3. Summary Data. (1) The cabinet shall not release data identified in KRS 216.2927.
(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:
(a) Diagnoses and procedures, primary, and any other level;
(b) Diagnoses and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research classification system;
(c) Patient gender;
(d) Age or age grouping;
(e) Discharge status;
(f) Payer category, all levels;
(g) Charge Information, total and ancillary;
(h) County of patient residence;
(i) County of provider;
(j) Ancillary department information;
(k) Length of stay, total, and average;
(l) External cause of injury; or
(m) Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.
(3) At least thirty (30) working days prior to the release of or dissemination of the reports identified in subsection (2) of this section, the cabinet shall permit a health care provider identified in the report the opportunity to verify the accuracy of information pertaining to the provider. Within the thirty (30) day period, the provider may submit to the cabinet corrections or errors in the compilation of the data, with supporting evidence.
(4) The cabinet shall correct data found to be in error and shall include additional commentary as requested by the provider for major omissions in the individual provider's data from the statewide
average.

(5) Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to KRS 216.292.

Section 4. Release of Data. (1) A person or agency shall, as a condition for receiving data from the cabinet, sign an "Agreement for Use of Kentucky Health Claims Data". A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

(2) To protect patient confidentiality:
   (a) A report or summary of data that consists of five (5) or fewer records shall not be released or made public;
   (b) A person or agency receiving data shall not redistribute or sell data in the original format;
   (c) A person or agency receiving data shall be approved by the custodial agency prior to receipt of the data;
   (d) The data collected pursuant to KRS 216.2920 shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and
   (e) A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees. (1) The cabinet shall charge $1,500 for the purchase of a single copy of File 1 or an annual, public-use data set, and $600 for the purchase of a single copy of File 2 or an annual, public-use data set.

(2) A public-use data set will be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 902 KAR 19:020, Section 4. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Policy, Department for Public Health, Division of Epidemiology and Health Planning, Health Policy Development Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 9, 2008
FILING WITH LRC: October 11, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008, at 9 a.m. in the CHR building, Cafeteria 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 in writing by November 14, 2008, five (5) working days prior to the hearing, of their interest 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 also contact this agency regarding this proposed administrative regulation until close of business December 1, 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 Street W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cami Banahan or Chandra Venetozzi, 564-9592

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to KRS 19:020, while maintaining patient confidentiality and further protecting personally identifiable information.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216.2920-216.2929.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content KRS 216.2920-216.2929 by establishing the guidelines for distribution and publication of data collected by the cabinet pursuant to KRS 19:020.
   (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 KRS 216.2920-216.2929 by establishing the guidelines for distribution and publication of data collected by the cabinet pursuant to KRS 19:020 while maintaining patient confidentiality and further protecting personally identifiable information.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: By amending this administrative regulation entities wishing to use public use data sets created by the Cabinet may now obtain information related to outpatient services/ambulatory surgery, emergency department, and observation stay. They will also receive additional data elements such as Major Diagnostic Category, and Medicaid Services Diagnosis Related Group.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add new data sources and new data elements to those currently provided in the public use data sets.
   (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing new data sources and data elements that are now available to the cabinet.
   (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing new data sources and data elements to entities wishing to purchase public use data sets.
   (e) How the amendment will impact on the confidentiality of the data: This amendment will impact on the confidentiality of the data by further protecting personally identifiable information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to purchase a public use data set. Between July 1, 2007 and June 30, 2008, 20 entities purchased public use data sets. We expect that number to increase with the addition of emergency department data.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the data being used to produce the public use data sets, no action will be required of regulated entities 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): The cost to purchase a public use data set is unchanged in the proposed regulation.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional data sources and data elements will be provided to entities. This will allow entities the ability to conduct more detailed and thorough research and analysis.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs will be incurred to implement this amendment as we already produce public use data sets as part of our normal operations.
(b) On a continuing basis: No additional costs will be incurred to implement this amendment on a continuing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy’s existing budget. As stated above, the public used data sets are already produced as part of our normal operations so no additional funding will be required.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not increase any fees. The fee for purchasing a public use data set remains unchanged by this amendment.
(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2020-216.2029
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? For the first year between July 1, 2007 and June 30, 2008 the Office of Health Policy collected $30,000 from the sale of public use data sets. With the additional data sources and data elements we anticipate that the revenue will continue to increase.
(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 revenue for subsequent years will remain similar to past years: approximately $30,000 per year.
(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this amendment.
(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment on a continuing basis. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Expenditures (+/-):
Other

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations (Amendment)

906 KAR 1:60. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

RELATES TO: KRS 15.380, 218A.1446, 218A.240
STATUTORY AUTHORITY: KRS 194A.050(1), 218A.1446
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 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic recordkeeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. KRS 218A.1446(3) states that pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Practices Branch and the Office of Drug Control Policy (ODCP), pharmacies requesting an exemption to electronic reporting may file an exemption request to the Branch and ODCP. This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system, and establishes the requirements for an exemption from electronic reporting.

Section 1. Definitions. (1) *Attempted purchase* means information regarding a transaction is entered into the KEMPT system by a dispenser of a precursor to methamphetamine and the sale is not completed because the system recommends that the transaction be denied pursuant to KRS 218A.1446(5) or (6).
(3) *Cabinet* is defined by KRS 218A.010(3).
(4) *Dispenser of a precursor to methamphetamine* means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully dispenses a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.
(5) *Kentucky Electronic Methamphetamine Precursor Tracking* or *KEMPT* means the electronic recordkeeping mechanism contracted for by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.
(6) *Law enforcement officer* means a:
(a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 216A.1446(2);
(b) Kentucky peace officer certified pursuant to KRS 15.380 as:
1. Kentucky State Police officer;
2. City, county, or urban-county police officer;
3. Deputy sheriff;
4. State or public university safety and security officer;
5. Certified or full-time peace officer of another state; or
(c) Federal peace officer.
(7) *ODCP* means the Office of Drug Control Policy within the Kentucky Justice and Public Safety Cabinet.
(8) *Precursor to methamphetamine* means a nonprescription
compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(3) "Purchaser" means an individual age eighteen (18) or older who purchases, or attempts to purchase, a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting. (1) Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b), the following information shall be entered in the KEMPT system upon the purchase, or attempted purchase, of a precursor to methamphetamine:

(a) Date of transaction pursuant to KRS 218A.1446(2)(b)(218A.1446(2)(b)), which is entered manually or recorded automatically by KEMPT;

(b) Identifying information regarding the purchaser pursuant to KRS 218A.1446(2)(b) and a government issued photo identification number (218A.1446(2)(b)) and

(c) Amount and name of the product dispensed pursuant to KRS 218A.1446(2)(b).

(2) The cabinet shall be solely responsible for the security of the transaction information required by subsection (1) of this section after a dispenser of a precursor to methamphetamine transmits the information.

(3) The cabinet shall provide a toll-free telephone number:

(a) For technical support available to a dispenser of a precursor to methamphetamine twenty-four (24) hours per day, seven (7) days per week; and

(b) For customer service available to a purchaser who has an inquiry regarding a transaction, Monday through Friday, 8 a.m. to 4:30 p.m., except for state recognized holidays.

(4) A pharmacy that uses the KEMPT system shall be exempt from maintaining a written log of the information required by KRS 218A.1446(2)(b).

(5) A pharmacy that is not able to secure an electronic signature shall maintain a hardcopy signature logbook consisting of each purchaser's signature and transaction number.

Section 3. Extension for Reporting Information and Exemption from Electronic Reporting. (1) If a dispenser of a precursor to methamphetamine experiences mechanical or electronic failure, the cabinet shall grant an extension for reporting the information required by Section 2(1) of this administrative regulation.

(2) To request an extension for reporting information required by Section 2(1) of this administrative regulation, a dispenser of a precursor to methamphetamine shall submit a request to the cabinet that:

(a) States the reason for the request;

(b) Identiﬁes the period of time for which the extension is necessary, not to exceed seventy-two (72) hours; and

(c) Is submitted:

1. Within twenty-four (24) hours of discovery of the circumstances resulting in the need for an extension request; or

2. On the day following a holiday or weekend if the discovery occurs on a day that cabinet offices are closed.

(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser of a precursor to methamphetamine shall:

(a) Maintain a written log or an alternative electronic record-keeping mechanism approved pursuant to KRS 218A.1446(2)(b) of the information required by Section 2(1) of this administrative regulation;

(b) Enter the information in the KEMPT system within seventy-two (72) hours of the system becoming operational.

(4) The cabinet shall acknowledge receipt of a request described in subsection (2) of this section that:

(a) Twenty-four (24) hours or receipt; or

(b) On the day following a holiday or weekend if cabinet offices are closed.

(5) An exemption from the electronic reporting requirement described in Section 2 of this administrative regulation shall be granted upon receipt by the branch and ODCP of a pharmacy’s written request for exemption if the request complies with KRS 218A.1446(3)(c).

Section 4. Request for KEMPT Reports. (1) The cabinet shall provide a KEMPT report:

(a) To a law enforcement officer whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs;

(b) To a pharmacy;

(c) Pursuant to a subpoena issued by a grand jury; or

(d) Pursuant to a court order issued by a criminal court.

(2) The cabinet shall not provide a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.

(3) A law enforcement officer or pharmacy may submit an electronic request for a KEMPT report at the following website: http://chfs.ky.gov/kemt.

(4) A KEMPT report provided to a pharmacy shall not identify the dispenser of a precursor to methamphetamine or the dispensing pharmacy.

Section 5. Denial of Transactions and Overrides. (1) If an individual attempts to purchase a precursor to methamphetamine in violation of the nine (9) gram restriction established by KRS 218A.1446(5) or age restriction established by KRS 218A.1446(6), the KEMPT system shall:

(a) Notify the pharmacy at the time of sale; and

(b) Recommend that the pharmacy deny the transaction.

(2) The KEMPT system shall provide an override feature for use by a dispenser of a precursor to methamphetamine to allow completion of the sale.

Section 6. Compliance Effective Date. Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b), all pharmacies that dispense precursors to methamphetamine shall:

(1) Comply with the electronic reporting requirements of Section 2 of this administrative regulation within (30) days of the date that a pharmacy has access to KEMPT [following the effective date of this administrative regulation], or

(2) (a) Submit a request to the branch and ODCP for an extension if the pharmacy is not able to comply with the electronic reporting requirements on the date the pharmacy has access to KEMPT;

(b) Agree to comply with the electronic reporting requirements by June 1, 2008.

SADIAQ N. REYNOLDS, Inspector General
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008, at 9 a.m. in the conference meeting room located on the First Floor of the CHR building, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 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 regarding this proposed administrative regulation until close of business December 1, 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 40621, phone (502)
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes an electronic recordkeeping mechanism called the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system for monitoring the sale of nonprescription products containing ingredients that could be used to make methamphetamine.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 218A.1446.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of nonprescription products containing ingredients that could be used to make methamphetamine.

(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 KRS 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of nonprescription products containing ingredients that could be used to make methamphetamine.

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

(a) How the amendment will change this existing administrative regulation: Pharmacies that report electronically using the KEMPT system must enter a purchaser's identifying information into the system, e.g., purchaser's name, date of birth, and address. This amendment clarifies that pharmacies must also enter a purchaser's government issued photo identification number into the KEMPT system.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify KEMPT system electronic reporting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by clarifying the KEMPT system's electronic reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the KEMPT system's electronic reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects pharmacies that report electronically using the KEMPT system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation or amendment, if now, 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: Unless an exemption from electronic reporting is granted, Kentucky's pharmacies will be required to enter a purchaser's government issued photo identification number into the KEMPT system upon the purchase, or attempted purchase, of a precursor to methamphetamine.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pharmacies will incur any costs when complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides needed clarification of the KEMPT system's electronic reporting requirements.

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

(a) Initially: No additional costs will be incurred to implement this amendment.

(b) On a continuing basis: No additional costs will be incurred to implement this amendment 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 state general funds. After the first year of implementation of this administrative regulation (adopted February 1, 2008), monies from a federal grant will be used by the Office of Drug Control Policy to continue operating the KEMPT system. State general funds will continue to be used by the Cabinet for Health and Family Services to fund a staff person responsible for KEMPT related activities.

(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 will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects pharmacies that report electronically using the KEMPT system.

3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.1446

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implant this amendment on a continuing basis.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1),

- 1324 -
Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 290.31.

(2) "Barriers" means a hardship the individual shall overcome to become employed and self-sufficient.

(3) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;
(b) Sexual abuse;
(c) Sexual activity involving a dependent child;
(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;
(e) Threat of, or an attempt at, physical or sexual abuse;
(f) Mental abuse; or
(g) Neglect or deprivation of medical care.

(4) "Benefit group" means a group composed of one (1) or more children and may include as a specified relative a person pursuant to Section 1[140] of this administrative regulation.

(5) [140] "Child" means an individual:

(a) Age fifteen (15) or under;
(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or
(c) Under age eighteen (18) and a high school graduate.

(6) "Concurrent means a hardship the individual shall overcome to become employed and self-sufficient.

(7) "Constant care" means active care for a family member living in the home by a work-eligible individual other than the wage recipient.

(8) "The family member spends sleeping or

(b) In which the family member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.

(9) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (3)(b) of this section.

(10) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(11) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 281.2(n).
same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and
(2) If:
(a) The alien no longer resides in the household with the individual responsible for the battery or cruelty;
(b) There is a substantial connection between the battery or cruelty and the need for the benefit; and
(c) The alien has been approved or has a petition pending for:
(i) Status as a spouse or child of a United States citizen pursuant to [clause (i), (ii), or (iv)] of 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);
(ii) Classification pursuant to [clause (i) or (ii) of][8 U.S.C. 1154(a)(1)(B)(ii) or (iii)] of this administrative regulation;
(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3); or
(iv) An alien who is lawfully residing in Kentucky and is:
1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303(a); and
3. The spouse or surviving spouse who is not remarried and who marries the requirements to 38 U.S.C. 1304, unless a dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph;
4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or
5. A parent or sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age; or
(16)(4) "Qualifying parent" means the parent who meets PLMA
(16)(4) Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.
(17)(4) "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.
(18)(4) "Second chance home" means an entity that:
(a) Provides a minor teenage parent a supportive and supervised living arrangement; and
(b) Requires a minor teenage parent to learn:
(1) Parenting skills, including child development;
(2) Family budgeting;
(3) Health and nutrition; and
(4) Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.
(19)(2) "Severe form of trafficking in persons" is defined by 22 U.S.C. 7102(b).
(20)(4) "STRIKAR" means an employed individual who is participating in:
(a) A work stoppage;
(b) A concerted slowdown of work; or
(c) An interruption of operations at his or her place of employment.
(21)(4) "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:
(a) 42 U.S.C. 1382(a) to the aged, blind and persons with a disability;
(b) 42 U.S.C. 1382c; or
(c) 42 U.S.C. 1382.
(22)(4) "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.
(23)(4) "Work" means participation in a Kentucky Works activity pursuant to 921 KAR 2:370, Section 2(1)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.
(2) An adjudicated parent shall include an administrative establishment of the relationship.
(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(1)(L) of this administrative regulation, shall be met for at least one (1) person in the home.
(2) Verification of school attendance, Form PA-33D, "[Child’s Certification of School Enrollment/Attendance]", shall be required for:
(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or
(b) Minor teenage parent pursuant to Section 2(1)(L) of this administrative regulation.
(3) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he or she is not attending because of:
(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.
(4) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the K-TAP case shall furnish his or her Social Security number or apply for a number if one (1) has not been issued.
(2) Refusal to furnish the Social Security number or apply for a number shall result in the instability of the person on whose Social Security number is not furnished.
(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:
(a) Is living in the state voluntarily and not for a temporary purpose; or
(b) Is in Kentucky for a job commitment or seeking employment.
(2) is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.
(2) Citizenship.
(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.
(2) A qualified alien, pursuant to Section 1(1)(L) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.
(3) A qualified alien, pursuant to Section 1(1)(L) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien’s entry into the United States. The following exceptions shall apply to this provision.
1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;
2. An alien who is granted asylum pursuant to 8 U.S.C. 1151;
3. An alien whose deportation is being withheld pursuant to:
   a. 8 U.S.C. 1253(a)(iii), as in effect prior to April 1, 1997; or
   b. 8 U.S.C. 1231(a);
4. An alien who is lawfully residing in Kentucky and is:
   a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
   b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303(a); and
   c. The spouse or unmarried surviving spouse of a person who is admitted to the United States pursuant to 22 U.S.C. 7105; or
   d. A parent or sibling of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105; and
U.S.C. 7105 and is under eighteen (18) years of age;
5. An alien who is a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522; or
6. An alien who is admitted to the United States as an Amerasian or refugee pursuant to 8 U.S.C. 1101;
(d) Failure of the parent or other adult applying for or receiving benefits to verify (sign a) citizenship or alien status [declaration, Form PA-14, "Declaration of Citizenship or Alien Status",] shall cause the needs of the parent or other adult to be removed from the case.

Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1[6][440] of this administrative regulation.
(2) A specific deprivation factor under Sections 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.
(2) Absence may be voluntary or involuntary.
(a) Voluntary absence shall include:
1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of:
   a. Thirty (30) days or more if the parent:
      (i) Voluntarily leaves; or
      (ii) Refuses to accept the child into his or her home; or
   b. Less than thirty (30) days if:
      (i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;
      (ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;
      (iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;
      (iv) The child is placed by the court with a specified relative other than the parent;
      (v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or
      (vi) Both parents are absent from the home;
5. Forced separation;
(b) Involuntary absence shall include:
1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation;
(2) A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:
(a) Medical;
(b) Social; and
(c) Economic.
(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.
(3) Incapacity shall exist in a case if the following criteria are met:
(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that:
   1. Was present at the time of application; and
   2. a. Has continued or is expected to last for a period of at least thirty (30) calendar days.
   b. The thirty (30) day period may include a period the claimant is undergoing:
      (i) Planned diagnostic study; or
      (ii) Evaluation of rehabilitation potential; and
   (b) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
(4) A determination regarding incapacity shall be made by:
(a) Field staff if the following criteria are met:
   1. The parent declares physical inability to work;
   2. The worker observes some physical or mental limitation; and
   3. The parent:
      a. Is receiving SSI;
      b. Is age sixty-five (65) or over;
      c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;
   d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:
      (i) Social Security Administration; or
      (ii) Medical review team of the cabinet;
   e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested, and there is no visible improvement in condition;
   f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;
   g. Is receiving Veterans Administration benefits based on 100 percent disability, as evidenced by an award letter;
   h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;
   i. Is recovering from surgery, illness, or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;
   j. Is on approved sick leave recovering from surgery, illness, or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer;
   k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or
   (b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.
(5) The factors to be considered by the medical review team in making the medical determination shall include:
(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and
(b) Competent medical testimony relevant to whether:
   1. A physical or mental disability, illness, or impairment exists; and
   2. The disability, illness, or impairment is:
      a. Sufficient to reduce the parent's ability to support or care for a child; and
      b. Likely to last thirty (30) days.
(6) The factors to be considered in making the nonmedical evaluation shall include:
(a) The claimants:
   1. Age;
   2. Employment history; and
   3. Vocational training;
4. Educational background; and
5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity available in the claimant’s area of residence.

(7) [In determining the] extent and accessibility of available employment opportunity, the limited employment opportunity of an individual with a disability shall be taken into account as follows:

(a) Available printed materials that provide information regarding available employment opportunity shall be researched;

(b) The local Office of Employment and Training office shall be contacted regarding accessible employment opportunity within the claimant’s area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his or her abilities.

(6) A written report shall be made of the determination under this section.

(8)[(6)] A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 113(4) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

(a) Less than 100 hours in a calendar month; or

(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature, if the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to Section 112(4) of this administrative regulation [by signing a completed Form KAR 14C-Current Earnings];["Qualifying Parent Eligibility"] with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section are met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for $500 of the $1000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3)(4); or

2. Subject to Kentucky Works, pursuant to 921 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits.

Section 11. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of the half-blood,

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 12 of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent, or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child, as follows:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple’s marriage is recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care.

(b) If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

1. Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care if no other eligible child is in the benefit group.

(4)(a) If a specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his or her share of K-TAP benefits during the period of the child’s unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the specified relative and child during the period of the child’s unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to KAR 2:016, Section 11.

Section 12. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;
3. Will; or
4. Other court record that clearly indicates the relationship of the alleged parent or relative;
   (c) Receipt of statutory benefits as a result of the alleged parent's circumstance;
   (d) Documents declaring voluntary paternity as specified in 901 KAR 5:070, Section 1; or
   (e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:
      1. School record;
      2. Bible record;
      3. Immigration record;
      4. Naturalization record;
      5. Church document, such as baptismal certificate;
      6. Passport;
      7. Military record;
      8. U.S. Census record; or
         9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.
   (2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:
      (a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;
      (b) Provides substantiation of the erroneous information; and
      (c) Provides a notarized statement or affidavit:
         1. Acknowledging the erroneous information; and
         2. Containing the correct information on the actual alleged parent.
   (3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 13. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI
   (2) If a child who receives SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.
   (3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 14. Sinkers. (1) A family shall be ineligible for benefits for the month when the parent, with whom the child is living on the last day of the month, is participating in a strike.
   (2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 15. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3)(4).

Section 16. Assessment. A work-capable individual, as defined by 45 C.F.R. 261.2(m), shall complete an assessment pursuant to 921 KAR 2:370.

Section 17. Kentucky Works. The technical requirements for participation in the Kentucky Works Program shall be pursuant to 921 KAR 2:370.

Section 18. (47) Cooperation in Child Support Activities. (1) In cooperation with the Department for Income Support, the Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:
   (a) Divorce;
   (b) Desertion;
   (c) Birth out-of-wedlock;
   (d) Legal separation;
   (e) Forced separation; or
   (f) Marriage annulment.
   (2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:
      (a) Identifying the noncustodial parent or obligor;
      (b) Providing information to assist in the: 1. Location of the noncustodial parent or obligor; 2. Enforcement of a child support order; or 3. Review or modification of a child support order;
      (c) Establishing paternity, if required;
      (d) Establishing, modifying or enforcing a child support order; and
      (e) Forwarding a child support payment received to the state's centralized collection agency.
   (3) The cabinet shall inform the Department for Income Support of K-TAP and Kinship Care Recipients to the applicant or recipient [regarding the individuals' right to file a good cause claim for refusing to cooperate in a child support activity.
   (4) The cabinet shall provide Form CS-333, "Facts About the Child Support Program for K-TAP and Kinship Care Recipients," to the applicant or recipient, [regarding the individuals' right to file a good cause claim for refusing to cooperate in a child support activity.
   (5) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:
      (a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:
         1. Child; or
         2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;
      (b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;
      (c) Legal proceedings for adoption of the child by a specified family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;
      (d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release the child(ren) for adoption if:
         1. Discussion has not gone on for more than three (3) months; and
         2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.
   (5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, ["[Good Cause Claim/ Determination"]], is filed to provide evidence to substantiate the claim.
   (a) Evidence used to determine good cause shall include:
      1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;
      2. Court document or other record indicating legal proceedings for adoption of the child by a specified family is pending before a court of competent jurisdiction;
      3. Record or other evidence indicating the noncustodial parent, or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;
      4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption, and the issue has not been pending more than three (3) months; or
      5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstances that provides the basis for the good cause claim.
   (b) In each good cause determination based upon anticipet
of serious emotional harm to the child or caretaker relative, the
following shall be considered.
1. The present emotional state of the individual subject to emo-
tional harm;
2. The emotional health history of the individual;
3. The extent and probable duration of the individual's emo-
tional impairment; and
4. The extent of involvement required by the individual in es-
| tablishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of physi-
| cal harm to the child or caretaker relative, and corroborative
evidence is not submitted, the cabinet shall conduct an investiga-
tion if it is believed that:
1. Corroborative evidence is not available; and
2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause
claim, it shall not contact the noncustodial parent or obligor, or the
alleged parent regarding support, unless the contact is necessary to
establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial
parent, or obligor, or the alleged parent during the investigation
of a good cause claim, the worker shall notify the applicant or re-
cipient of the proposed contact to either:
1. Obtain permission for the contact; or
2. Enable the applicant or recipient to:
   a. Present additional evidence or information so that the con-
      tact shall be unnecessary;
   b. Withdraw the application for assistance or request disconti-
      nuance of K-TAP; or
   c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause
claim or conducting an investigation, the cabinet shall:
(a) Document the case;
(b) Determine that good cause;
1. Exists and a support activity cannot be initiated without en-
dangering the:
   a. Best interests of the child; or
   b. Physical or emotional health of the child or the relative; or
2. Does not exist;
(c) Advise the applicant or recipient in writing, Part II of Form
   PA-121, [P]Good Cause Claim/Determination[Q], of the result of the
   good cause claim determination; and
(d) Identify each case that good cause is established, but may
   be subject to change, for subsequent review.

(7) If the specified refusal refuses to cooperate without good
cause criteria being claimed, or claimed but not considered to be
met by the cabinet:
1. K-TAP benefits shall be reduced by twenty-five (25) per-
cent of the amount of the maximum payment for the appropriate
family size pursuant to Section 9 of 921 KAR 2:016; and
2. The cabinet shall attempt to obtain a protective payee to
   administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to
cooperate, the specified relative states he or she will cooperate, the
| cabinet shall:
(a) Remove the twenty-five (25) percent reduction in benefits
effective the first administratively feasible month if the individual
states he or she will cooperate and verification of cooperation is
provided timely; and
(b) [Remove the protective payee from the case; and
(c) Do not authorize a back payment for the period the individual
did not cooperate.

(9) As a condition of eligibility for assistance, each applicant
for, or recipient of, K-TAP shall make an assignment of rights to the
state for support that the applicant or recipient may have from any
other person in accordance with KRS 205.720(1). The assignment shall:
(a) Include all members of the case for whom support rights
apply; and
(b) Be completed at the time of application for K-TAP benefits.

Section 19[14]. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the re-
| quirements to receive another benefit if potential entitlement exists.
(2) Failure to apply for another benefit or comply with its re-
| quirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of
benefits received from another source, other than for the purpose of
reimbursement for a previous overpayment, this action shall result in ineligibility.

Section 20[19]. Minor Teenage Parents. (1) A minor teenage
| parent under the age of eighteen (18) living with the spouse shall
participate in an educational activity directed toward the attainment
of a high school diploma, or its equivalent, or a cabinet approved
alternate education or training program if the individual has:
(a) A minor child at least twelve (12) weeks of age in his or her
| care, and
(b) Not completed a high school education (or its equivalent)

(2) Except pursuant to subsection (4) of this section, a minor
| teenage parent and his or her minor child shall reside in:
(a) A place of residence maintained by:
   1. A parent;
   2. A legal guardian; or
3. An adult relative pursuant to Section 11 of this administrative
regulation; or
(b) An appropriate adult supervised supportive living arrange-
ment, that includes a second chance home or maternity home,
taking into consideration the needs and karen[oeone] of the
minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage par-
| ent in locating a second chance home, maternity home, or other
appropriate adult supervised supportive living arrangement if the:
(a) Minor teenage parent does not have a:
   1. Parent, legal guardian, or appropriate adult relative pursuant
to Section 11 of this administrative regulation who is living or
   whose whereabouts are known; or
   2. Living parent, legal guardian, or other appropriate adult
   relative pursuant to Section 11 of this administrative regulation
   who:
      a. Otherwise meets applicable state criteria to act as the legal
guardian of the minor teenage parent; and
      b. Would allow the minor teenage parent to live in the home of
the parent, guardian, or relative pursuant to Section 11 of this adm-
istrative regulation; or
(b) Cabinet determines:
   1. The minor teenage parent or the minor child of the teenage
parent is being or has been subjected to serious physical or emo-
tional harm, sexual abuse, or exploitation in the residence of the
minor teenage parent's own parent or legal guardian; or
2. Substantial evidence exists of an act or failure to act that
   presents an imminent or serious harm if the minor teenage
   parent and the minor child lived in the same residence with the
   minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be
waived if the cabinet determines:
(a) Living in the place of residence maintained by the parent,
legal guardian, or adult relative pursuant to Section 11 of this ad-
ministrative regulation is not in the best interest of the minor child
taking into consideration the needs of the minor child; or
(b) The minor teenage parent's current living arrangement is
appropriate.

(5) If a circumstance changes and the current arrangement
ceases to be appropriate based on the needs and karen[oeone] of the minor teenage parent, the cabinet shall assist
the minor teenage parent in finding an alternate appropriate arrange-
ment.

(6) The minor teenage parent shall complete an assessment,
in accordance with 921 KAR 2:370(a Teen Parent Prenatal Re-
sponsibility Plan, Form PA-202TP).

(7) If the minor teenage parent is determined to be ineligible for
K-TAP as a result of not complying with a provision found in this
section, payment to a protective payee shall continue for the eli-
| gible child of the minor teenage parent.

(8) Even if exemption criteria are met and the cabinet de-
termines the minor teenage parent's current living arrangement is
appropriate, a minor teenage parent and [the other] child, who
do not reside in a place of residence maintained by a parent, legal
guardian, other adult relative pursuant to Section 11 of this admin-
isterative regulation, second chance home, or maternity home, shall be
considered an adult regarding benefit time limitations pursuant
to Section 2(20) of this administrative regulation.

Section 21.[20] Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619, shall not be provided for more than sixty (60) cumulative months to a benefit group that includes:
(a) An adult;
(b) A minor teenage parent pursuant to Section 20[19](8) of this administrative regulation; or
(c) A fugitive or drug felon not eligible pursuant to Section 22 or 23 of this administrative regulation.
(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the Individual:
(a) Is batted or subjected to extreme cruelty. During the ex-
tension period the individual shall have an individual service plan pursuant to Section 25(24)(1)(b) of this administrative regulation;
(b) Is a work-eligible individual in the benefit group, who the cabinet determines has a physical or mental disability, as estab-
lished in Section 9(3) of this administrative regulation. During the
extension period, the individual shall comply with:
1. Treatment or intervention activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(C)12. and 4(2); and
2. Child support cooperation requirements pursuant to Section 18(17) of this administrative regulation;
(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), is a parent providing [exempt] care for a disabled family member living in the
home as verified pursuant to 921 KAR 2:370, Section 3(5). During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 18(17) of this administrative regulation;
(d) Is a grandparent or other relative, except for a parent, car-
ing for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:
1. Child support cooperation requirements pursuant to Section 18(17) of this administrative regulation; and
2. Except for a caretaker relative age sixty (60) or over, Ken-
tucky Works requirements pursuant to 921 KAR 2:370. If the care-
taker relative is included in the benefit group,
(e) Is an adult with insufficient employment opportunities, who:
1. Has complied with:
   a. Kentucky Works requirements pursuant to 921 KAR 2:370;
   b. Child support cooperation requirements pursuant to Section 18(17) of this administrative regulation; and
2. During the extension period, shall:
   a. Comply with:
      (i) Kentucky Works requirements pursuant to 921 KAR 2:370;
   (b) Child support cooperation requirements pursuant to Section 18(17) of this administrative regulation;
   (iii) Employment opportunities and activities listed on the KW-
       202, Transitional Assistance Agreement, incorporated by reference in and pursuant to 921 KAR 2:370, Section 4(2); and
   (iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3)(4); and
   b. Not quit or refuse a job without good cause pursuant to 921
       KAR 2:370, Section 6; and
3. Shall be limited to an extension period of six (6) consecutive
   months; or
4.1. Received a domestic violence exemption pursuant to Sec-
   tion 25(24)(2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.
2. During the extension period, the Individual shall comply with:
   a. Child support cooperation requirements pursuant to Section 18(17) of this administrative regulation; and
   b. Kentucky Works requirements pursuant to 921 KAR 2:370.
3. If otherwise eligible, a benefit group containing a member
who has lost a job, through no fault of the recipient, within thirty
(30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.
(4) A benefit group that receives an extension to the sixty (60)
months time limit shall be reviewed:
(a) Every six (6) months for an extension pursuant to subsec-
tion (2)(a), (c), or (f) of this section;
(b) Every three (3) months for an extension pursuant to sub-
section (2)(e) of this section;
(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this sec-
tion; or
(d) Annually for an extension pursuant to subsection (2)(d) of this
section.
(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.
(6) A benefit group discontinued from K-TAP due to reaching
the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.
(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:
(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and
(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400. Section 9(7). and
(8)(a) K-TAP shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 20(19)(6) of this administrative regulation, who has:
1. Received six (6) cumulative months of (K-TAP) assistance from a federally funded program pursuant to 42 U.S.C. 601 to 619;
and
2. Been penalized for failure to cooperate in Kentucky Works, pursuant to 921 KAR 2:370, for a period of three (3) cumulative months.
(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:
1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;
2. Meets the technical requirements established in this admin-
istrative regulation; and
3. Meets the standard of need in accordance with 921 KAR
   2:016.
(9) Time limitations shall apply to a:
(a) Sanctioned individual; or
(b) Frenzied individual.

Section 22.[21] Receiving Assistance In Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for
(a) A program pursuant to:
   1. 42 U.S.C. 601 to 619;
   2. 42 U.S.C. 1396, or
   3. 7 U.S.C. 2011 to 2036; or
(b) Benefits received under supplemental security income.
(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a
parole by the President of the United States with respect to the con-
donut that was the subject of the conviction.
(3) An individual in subsection (1) of this section living with a
child receiving assistance shall be required to cooperate in Ken-
tucky Works in accordance with 921 KAR 2:370.

Section 23.[22] Fugitive Felons. (1) K-TAP assistance shall
not be provided to an individual:
(a) Fleeing to avoid prosecution, or custody or confinement
after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

- 1331 -
Section 24 [243] Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 25 [244] Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence. (b) The applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;
2. Reflect the individualized assessment and a revision made by a reevaluation;
3. Include appropriate referral to counseling and supportive services based on the needs and barriers[see note] identified in the individualized assessment, as determined by the cabinet;
4. Be designed to lead safely to employment; and
5. Be completed no less often than every six (6) months.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;
(b) Child support cooperation requirements pursuant to Section 18(4) of this administrative regulation;
(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 21(20) of this administrative regulation; or
(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 26 [253] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [PA-IC Supplement D, Qualifying Parent-Eligibility*, edition 4/06;]
(b) [PA-14, Declaration of Citizenship or Alien Status*, edition 4/06;]
(c) [PA-33D, Child’s Certification of School Enrollment/Attendance*, edition 10/06; and]
(d) [PA-121, Good Cause Claim/Determination*, edition 2/06;]
(e) [PA-202TP, Teen Parent Personal Responsibility Plan*, edition 10/06;]
(f) [CS-333, Facts About the Child Support Program for K-TAP and Kinship Care Recipients*, edition 6/06; and]
(g) [CS-333, Facts About the Right to Claim Good Cause*, edition 6/06;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
school and support for the dependent child's care. Protective payee language has been made obsolete due to Electronic Benefit Transfer (EBT) now utilized as the primary payment method for K-TAP recipients. The amendment removes the definition of "constant care," as a medical professional will verify the care needed to allow an extension past the sixty-month lifetime limit on the receipt of K-TAP benefits under the same process used for a participation exemption in 921 KAR 2:370, Technical requirements for Kentucky Works. Other amendments were necessary to comply with KRS Chapter 13A and to ensure the cross-reference accuracy and terminology congruency amongst related programs and other administrative regulations governing TANF programs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by promoting work and self-sufficiency for work-eligible K-TAP recipients, removing obsolete language and forms, and modifying technical eligibility requirements for K-TAP consistent with related programs, Kentucky's Title IV-A State Plan, and other administrative regulations governing TANF programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the administration of the statutes through programmatic consistency, congruency, and the promotion of work and self-sufficiency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP. As of June 2008, there were 22,972 families receiving K-TAP.

(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, inclusive of:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will require an assessment (for Kentucky Works participation) of each work-eligible K-TAP applicant during eligibility determination. The case will not be approved until the assessment is completed; otherwise, the applicant will be denied benefits. Timeframes for a work-eligible K-TAP recipient's participation in Kentucky Works, the work program for work-eligible K-TAP recipients, have not changed. Assessments for a minor teen parent and other adult K-TAP recipients will be made the same. A parent K-TAP recipient, who seeks an extension to the sixty-month lifetime limit on the K-TAP receipt due the care of a disabled family member, will be required to provide medical verification rather than the need for "constant care".

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will deny K-TAP benefits to a work-eligible K-TAP applicant if the applicant does not cooperate and complete an assessment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A work-eligible K-TAP applicant will benefit from completion of an assessment (for Kentucky Work participation) as a technical eligibility requirement, because once approved, the work-eligible recipient will have been given more notice and additional time to arrange and/or take preparatory steps towards work and self-sufficiency. The assessment as a part of the initial application is anticipated to prevent a work-eligible K-TAP recipient's exhaustion of his/her lifetime limit of K-TAP benefits in advance of securing work and self-sufficiency. The new assessment for all K-TAP applicants/recipients, including minor teen parents, will ensure consistency across the program and provide a more thorough assessment, particularly of minor teen parents to support their educational efforts and care of the dependent child. A parent K-TAP recipient will benefit from a more structure process to determine the need for the recipient to extend the recipient limit on K-TAP benefits due to the care of a disabled family member. As a result of this and other concurrent amendments, K-TAP recipients will benefit from programmatic consistency and clarity amongst TANF administrative regulations.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for this administrative regulation are federal Title IV-A (TANF) and state general funds used to meet Maintenance of Efforts requirements.

(7) Provide an assessment of whether an 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 amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 194A.50(1), 205.200(2), 205.2003(1)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the Federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter, additional or different responsibilities or requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205 200(2), (3), 205.2003(1), 42 U.S.C. 601 to 619, Pub. L. 109-171
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This program has been operational for numerous years and will not generate any revenues in the first year.
   (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 program has been operational for numerous years and will not generate any revenues in the first year.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational for numerous years and will not generate any revenues in subsequent years.
   (c) How much will it cost to administer this program for the first year? This program has been operational for numerous years and will not require any additional cost in the first year. Rather, the
amendment should curtail federal financial penalty and stream
process to improve efficiencies and clarity.
(d) How much will it cost to administer this program for sub-
sequent years? This program has been operational for numerous years
and will not require any additional cost in subsequent years.
Note: If specific dollar estimates cannot be determined, provide a
brief narrative to explain the fiscal impact of the administrative
regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:016. Standards for need and amount for the
Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS [194A.050] 205.200, 205.210, 205.201,
205.211, [7-C.F.R. 1484.201.] 45 C.F.R. 233.20(a)(13), Parts 260-
265, 400.06(d), 8 U.S.C. 1182a, 30 10. 808(9)(b), (2306),
(10), (114A(4), 2473(4)(c)(13), (25 U.S.C. 459, 1251, 1401, [1408].
(206), [71-012], (71-1024, 1086], 1771, 1772, 5001,
4950-5048, 6621, 10602(c)
STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2),
205.210(1), 42 U.S.C. 601-619
NECESSITY, FUNCTION, AND CONFORMITY: KRS
194A.050(1) requires the secretary to promulgate all administrative
regulations authorized by applicable state laws necessary to oper-
ate the programs and fulfill the responsibilities vested in the cabinet
or to qualify for the receipt of federal funds and necessary to coo-
perate with other state and federal agencies for the proper admin-
istration of the cabinet and its programs. KRS 205.200(2) requires
the cabinet to prescribe, by administrative regulation, the condi-
tions of eligibility for public assistance, in conformity with the Social
Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS
205.200(2) and 205.210(1) require that the secretary establish the
standards of need and amount of assistance for the Kentucky
Transitional Assistance Program (K-TAP), the block grant program
funded by 42 U.S.C. 601 to 619. This administrative regulation sets
forth the standards of need for and the amount of a Kentucky Transi-
tional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" is defined by means the
definition of "assistance" pursuant to 45 C.F.R. 260.31.
(2) "Benefit group" means a group composed of one (1) or
more children and may include as specified relative a person pur-
suant to 921 KAR 2:006, Section 11.
(3) "Change in a circumstance" means a change in income or
dependent care expense affecting the ongoing K-TAP payment
that includes:
(a) Beginning or ending employment;
(b) Change in an employer or obtaining additional employment;
(c) Increase or decrease in the number of work hours;
(d) Increase or decrease in the rate of pay;
(e) Increase or decrease in the dependent care expense due to
a change in:
1. Provider;
2. Number of hours of care;
3. Number of individuals for whom care is given; or
4. Amount charged; or
(f) Change in farm cropping arrangement or type of self-
employment activity.
(4) "Claimant" means the individual responsible for the repay-
ment of an overpayment.
(5) "Countable income" means income that remains after ex-
cluded income and appropriate deductions are removed from gross
income.
(6) "Deduction" means an amount subtracted from gross in-
come to determine countable income.

(7) "Electronic benefit transfer" or "EBT" means a computer-
based electronic benefit transfer system in which an eligible
household's benefit authorization is received from a central com-
puter through a point of sale terminal or automated transfer
machine.
(8) "Employed" means a person performs a physical or mental
activity in exchange for direct monetary compensation.
(9) "Excluded income" means income that is received but not
counted in the gross income test.
(10) "Full-time employment" means employment of thirty (30)
hours per week or 130 hours per month or more.
(11) "Full-time school attendance" means a workload of at
least:
(a) The number of hours required by the individual program for
participation in
1. An adult basic education program;
2. A general educational development program; or
3. A literacy program;
(b) The number of hours required by the individual program
for participation in a [A semester system] (or)
1. Twelve (12) semester hours or more;
or
2. Six (6) semester hours or more during the summer term;
(c) The equivalent in college or university, if other than a
semester system is used;
or
(12) "Gross income limitation standard" means 185 percent of
the assistance standard, as set forth in Section 9 of this adminis-
trative regulation.
(13) "Kentucky Transitional Assistance Program" or "K-TAP"
means a money payment program for a child who is deprived of
parental support or care pursuant to 921 KAR 2:006, Section 1.
(14) "Kentucky Works" means a program that assists a
(a) Recipient of K-TAP in obtaining education, training, expe-
rience and employment necessary to leave public assistance;
(b) Former K-TAP recipient with job retention service.
(15) "Lump sum income" means income that does not
(a) Occur on a regular basis; or
(b) Represent accumulated monthly income received in a sin-
gle sum.
(16) "Minor" means a person who is under the age of eighteen
(18).
(17) "Minor parent" means an individual who:
(a) Has not attained eighteen (18) years of age;
(b) Is not married or is married and not living with the spouse;
and
(c) Has a minor child in the applicant's or recipient's care.
(18) "Part-time employment" means employment of:
(a) Less than thirty (30) hours per week;
(b) Less than 130 hours per month
(19) "Part-time school attendance" means a workload that is
less than full-time school attendance as determined by the educa-
tional institution.
(20) "Penalized individual" means a person who is required to
be included in the benefit group but fails to fulfill an eligibility re-
quirement, causing a reduction in benefits of the benefit group.
If otherwise eligible, a penalized individual remains a member of the
benefit group.
(21) "Recoupment" means recovery of an overpayment of an
assistance payment.
(22) "Sanctioned individual" means a person who is required to
be included in the benefit group but who is excluded from the
benefit group due to failure to fulfill an eligibility requirement.
(23) "Self-employment income" means income from a business
taking if taxes are not withheld prior to receipt of the income by the
individual.
(24) "Supplemental security income" or "SSI" means a monthly
cash payment made pursuant to 42 U.S.C. 1381 to 1384f(4)[386] to
the aged, blind and disabled.
(25) "Unavailable" means the income is not accessible to the
K-TAP benefit group for use toward basic food, clothing, shel-
ter, and utilities.
(26) "Workforce Investment Act" or "WIA" means a program to
assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment, as established by 29 U.S.C. 2801.

(27) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:
(a) A dependent child;
(b) A child’s parent living in the home with the dependent child who is:
   1. Eligible for K-TAP; or
   2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 2(20);
   (c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or
   (d) An eligible child who is:
      1. In full-time school attendance or part-time school attendance; and
      2.a. Sixteen (16) through eighteen (18) years of age; or
         b. A minor parent.
   (2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.
   (3) If a dependent child’s parent is a minor living in the home with an eligible parent, the minor’s parent shall also be included in the benefit group if the minor’s parent applied for assistance.
   (4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:
(a) Available to the benefit group; and
(b) Owned in whole or in part by:
   1. An applicant or recipient;
   2. A sanctioned or penalized individual; or
   3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.
   (2) The total amount of resources reserved by a benefit group shall not be in excess of $2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.
   (3) Excluded resources:
   (a) Resources from the following individuals shall be excluded from consideration:
      1. A recipient of SSI or the state supplementation program living in the home;
      2. A child excluded from the K-TAP grant;
      3. An individual not receiving assistance but living in the home including:
         a. The stepparent;
         b. The parent or legal guardian of a minor parent;
         c. The spouse of a nonresponsible specified relative; or
         d. The spouse of a minor dependent child.
   (b) The following resources shall not be included in the $2,000 resource limit:
      1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;
      2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
      3. An excluded income payment, pursuant to Section 5 of this administrative regulation;
      4. Principal and accrued interest of an irrevocable trust during a period of unavailability;
      5. Prepaid burial funds;
      6. Cash surrender value of all burial insurance policies per family member;
      7. Principal of a verified loan;
      8. Up to $12,000 to Aleutians and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
      9. Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran’s survivor;
      10. Earned income tax credit payment in the month of receipt and the following month;
      11. A payment received from the Radiation Exposure Compensation Trust Fund;
      12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;
      13. Up to a total of $5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section; and
      14. A payment received from the National Tobacco Growers Settlement Trust.
   (4) Disposition of resources:
   (a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.
   (b) The household’s application shall be denied, or assistance discontinued if:
      1. The transfer was made expressly for the purpose of qualifying for assistance; and
      2. The amount of the transfer, when added to total resources, exceeds the resource limits.
   (c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.
   (d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month.
   (5) Lifetime care agreement:
   (a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligble.
   (b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.
   (6) Resources held jointly by more than one (1) person.
   (a)1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the K-TAP applicant or recipient. If the account is held jointly, then the total balance of the joint account shall be considered available to the K-TAP applicant or recipient unless the other owner is a recipient of SSI.
   2. If the other owner receives SSI, the:
      a. Balance shall be divided evenly by the number of owners; and
      b. The K-TAP applicant or recipient’s share shall be considered available.
   (b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient’s share shall be determined by obtaining a written statement from the other owners as to the division.
   (c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient’s available share shall be determined by dividing the value of the business enterprise by the number of owners.
   (d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient’s share shall be determined by dividing the value of the resource by the number of owners.
   (e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:
      1. A written statement regarding ownership, who may deposit and withdraw;
      2. A written statement from each of the other owners that corroborates the applicant’s or recipient’s statement, unless the account holder is a minor or is incompetent; and
      3. Verification that the applicant’s or recipient’s name has been
removed from the resource.  

(7)(a) To be considered an exempt resource, the individual development account shall have been:
1. Established on or after May 1, 1997; and
2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.
(b) A qualified purpose to establish an individual development account shall be for:
1. Postsecondary educational expense that shall include:
   a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institu-
      tion;
   b. Fees, books, supplies and equipment required for a course of instruction at an eligible educational institu-
      tion; and
   c. An eligible educational institution that shall be an:
      (i) Institution pursuant to 20 U.S.C. 1088(b)(1); or
      (ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (10);
2. First home purchase that includes:
   a. Costs of acquiring, constructing, or reconstructing a resi-
      dence; and
   b. Usual or reasonable settlement, financing, or other closing costs;
3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:
   a. Include capital, plant, equipment, working capital, and invento-
      ry expenses;
   b. Be approved by a financial institution; and
   c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneur advisor if needed; or
4. Other purpose allowed by a federal regulation or clarification;
(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.
(d) To be considered an exempt resource, an individual develop-
ment account shall be matched by funds from a:
1. Nonprofit organization; or
2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for K-
TAP, the following shall apply:
(a) Gross Income Test:
   (1) Gross Income Test:
   (a) The total gross non-K-TAP income shall not exceed the gross income limitation standard and shall include:
1. Income of the benefit group;
2. Income of a parent who does not receive SSI or state sup-
   plementation pursuant to 921 KAR 2.015;
3. Income of a sanctioned or penalized individual; and
4. An amount deemed available from:
   a. The parent of a minor parent living in the home with the benefit group;
   b. A stepparent living in the home;
   c. The spouse of a minor dependent child living in the home; or
   d. An alien's sponsor and sponsor's spouse if living with the sponsor;
   (b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and
   (c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.]
(b) Benefit calculation:
   (a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;
   (b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and
   (c) Amount of assistance shall be determined prospectively.[]
1. Payment obtained and used under a condition that precludes the recipient's use for current living costs; and
2. An education grant or loan to an undergraduate made or insured under a program administered by:
   a. The United States Commissioner of Education; or
   b. The Bureau of Indian Affairs;
   (h) Highway relocation assistance;
   (i) Urban renewal assistance;
   (m) Federal disaster assistance and state disaster grant;
   (n) Home produced utilized for household consumption;
   (o) Housing subsidy received from federal, state or local government;
   (p) Funds distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
   (q) Funds distributed per capita or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(i) Payment for supporting services or reimbursement of out-of-pocket expenses made to an individual volunteering as a:
1. Senior health aide; or
2. Member of the:
   a. Service Corps of Retired Executives; or
   b. Active Corps of Executives;
   (a) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5048 if less than the minimum wage under state or federal law, whichever is greater including:
   1. Volunteers in Service to America (VISTA);
   2. Foster Grandparents;
   3. Retired and Senior Volunteer Program, or
   4. Senior Companion;
   (g) Payment from the cabinet for:
   1. Child foster care; or
   2. Adult foster care;
   (h) Energy assistance payment made under:
   1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
   2. Other energy assistance payment made to an energy provider or provided in-kind;
   (i) The first fifty (50) dollars of child support payment;
   (j) Earnings of an individual attending school who is age nineteen (19) or under;
   (k) Earnings of a dependent child under eighteen (18) who is a high school graduate;
   (l) Nonrecurring monetary gifts totaling thirty (30) dollars or less per month per individual;
   (m) The principal of a verified loan;
   (n) Up to $15,000 Alaskan and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
   (b) Income of an Individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefit;
   (c) The essential person's portion of the SSI check;
   (d) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;
   (e) The advance payment or refund of earned income tax credit;
   (f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
   (g) Interest and dividend income;
   (h) In-kind income;
   (i) Income of a technically ineligible child;
   (j) Payment made from the Agent Orange Settlement Fund;
   (k) K-TAP payment including back payment;
   (l) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:005, Section 11;
   (m) Payment made from the Radiation Exposure Compensation Trust Fund;
   (n) Up to $2,000 per year of income received by Individual Indians denied from a lease or other use of individually-owned trust or restricted land;
   (o) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
(qq) A payment received from the National Tobacco Growers Settlement Trust;
(rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 1002(c);
(ss) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;
tt) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
uu) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-3(f)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4);
(vv) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); and

ww) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied:
(a) Work expense standard deduction of ninety (90) dollars for full-time and part-time employment;
(b) [On-or-after-November-1-1995,] if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:
   1. Be allowed as a work expense for:
      a. An able bodied child age thirteen (13) or over and not under court supervision;
   2. An incapacitated adult living in the home and receiving K-TAP;
   c. A sanctioned individual whose earned income is considered available to the K-TAP household;
   d. A K-TAP case that is otherwise ineligible for K-TAP without the benefit of the disregard for child care, at the option of the recipient;
   or
   e. The month of application for K-TAP benefits; and
   f. Not exceeded:
      a. $175 per month per Individual for full-time employment;
      b. $150 per month per Individual for part-time employment;
      c. $200 per month per individual for child under age two (2);
   (c) Child support payment received and retained until notification of eligibility for K-TAP is received;
   (d) Child support payment assigned and actually forwarded or paid to the cabinet; and
   (e) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group calculated as follows:
   1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;
   2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and
   3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and
   (f) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earned income calculated as follows:
   1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient; and
   2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard;

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:
(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or
(b) Fails to report an increase in earnings, that impacts eligibili-
ty, within ten (10) days of the change, unless good cause exists as follows:
1. The benefit group has been directly affected by a natural disaster;
2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or
3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.

(6) Changes in income and resources of the benefit group, that contain a member who is participating in the wage supplementation component of Kentucky Works pursuant to 51 KAR 2:570, shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 6, Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7, Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:
(a) A stepparent;
(b) The spouse of a minor dependent child;
(c) The spouse of a specified relative other than a parent; and
(d) A parent of a minor parent. (2) The gross income of the Individual shall be considered available to the benefit group, subject to the following deductions:
(a) The first ninety (90) dollars of the gross earned income; and
(b) An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:
   - a. The support of the individual; and
   - b. A person living in the home if:
      (i) The needs of the person are not included in the K-TAP eligibility determination; and
      (ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;
   - 2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or
   - 3. Payment for alimony or child support paid to a person not living in the home by the individual.
(3) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:
(a) Step parent;
(b) Spouse of a minor dependent child,
(c) Spouse of a specified relative other than a parent; or
(d) Parent of a minor parent.

Section 8, Alien Sponsorship Income and Resources. (1)(a) For the purpose of this section, the alien's sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.
(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.
(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.
(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.
(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored alien shall be ineligible for a month if adequate information on the sponsor or sponsor’s spouse is not provided.
(5) If an alien is sponsored by an agency or organization, that has executed an affidavit of support, the alien shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:
(a) Is no longer in existence; or
(b) Does not have the financial ability to meet the alien's needs.
(6) The provisions of this subsection shall not apply to an alien pursuant to subsection (5) or (7) of this section.
(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:
1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;
2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:
   - a. The sponsor; and
   - b. Other person living in the household.
(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; or
(ii) Whose needs are not considered in making a determination of eligibility for K-TAP;
3. An amount paid by the sponsor to a nonhousehold member who is or may be claimed as a dependent in determining the sponsor's federal personal income tax liability;
4. Actual payment of alimony or child support paid to a nonhousehold member; and
5. Income of a sponsor receiving SS or K-TAP.
(b) Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a K-TAP applicant in this state, less $1,500.
(7)(a) For a sponsored alien who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien.
(b) The sponsor's obligation shall be available until the:
   - 1. Immigrant.
      a. Becomes a United States citizen;
      b. Is credited with forty (40) quarters of work; or
      c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or
   - 2. Sponsor dies.
(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.
(8)(a) The actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination, if any:
1. Amount less than the amount in the sponsorship agreement is made available to the immigrant; and
2. Alien is determined indigent if an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination if an alien is determined indigent.
(b) An alien shall be determined indigent if:
   - 1. The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and
   - 2. Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual including the sponsor, the alien is unable to obtain food and shelter.
(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:
(a) Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:
   - 1. Spouse or parent; or
   - 2. Spouse or parent's family living with the alien's child and the spouse or parent allows the cruelty or battery; or
(b) Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family’s countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:
1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or
2. The payment maximum pursuant to subsection (2)(a) of this section.
(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.
(2) The following method shall be used to calculate a best estimate:
(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:
1. Cents shall:
   a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
   b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.
2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used.
3. A monthly amount shall be determined by:
   a. Adding gross income from each pay period;
   b. Dividing by the total number of pay periods considered;
   c. Converting the pay period figure to a monthly figure by multiplying a:
      (i) Weekly amount by four and one-third (4 1/3);
      (ii) Biweekly amount by two and one-sixth (2 1/6); or
      (iii) Semimonthly amount by two (2); and
   d. Rounding to the nearest dollar.
4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:
   a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period or
   b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
   (i) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar;
   (b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:
      1. Rounding cents to the nearest dollar;
      2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
      3. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation; and
   (c) For a case with self-employment income, a monthly amount shall be determined as follows:
      1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12); or
      2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing the number of months the business has been in existence; and
      3. Profit shall be determined by:
         a. Rounding the total gross income to the nearest dollar;
         b. Rounding the total amount of allowable expenses to the nearest dollar;
         c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and
      d. Subtracting the rounded monthly expense from the rounded monthly income.
   (3) The best estimate shall be recalculated:
      (a) At six (6) month intervals for a case with:
         1. Earned or unearned income other than self-employment;
         2. Income from a self-employment enterprise that has not been in existence for at least one (1) year;
      (b) At twelve (12) month intervals for a case with a self-employment enterprise that has been in existence for at least one (1) year;
      (c) If the agency becomes aware of a change in a circumstance; or
      (d) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. K-TAP Recoupment. The following provisions shall apply for recoupment of a K-TAP overpayment.
(1) Necessary action will be taken promptly to correct and recoup an overpayment.
(2) An overpayment shall be recovered:
(a) From an adult claimant, whether [at all] currently receiving K-TAP benefits:
1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;
2. After administrative and judicial remedies have been exhausted or abandoned; and
3. Including assistance paid:
   a. Pending the hearing decision; or
   b. Due to cabinet error, and
(b) Through:
1. Repayment by the claimant to the cabinet;
2. Reduction of future K-TAP benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;
3. Civil action in the court of appropriate jurisdiction; or
4. If the cabinet becomes aware of expensed electronic benefits transfer (EBT) payments, reduction of the overpayment balance [shall be reduced] by an amount equal to the expensed benefits.
(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one

- 1339 -
against the other in correcting the payment to a current recipient.

Section 12. Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13); and
(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.

Section 13. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily:
(a) Return a benefit payment; or
(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement requesting a written statement requesting this option to avoid an overpayment if the case:
1. [Case is totally ineligible for the month the payment is issued; and
2. Has not been reduced for recoupment of a previous overpayment.]
(2) If a payment is voluntarily returned, the cabinet shall:
(a) Determine whether or not the recipient is due a refund as described in Section 14 of this administrative regulation; and
(b) Complete a PA-302, Receipt For Returned Benefits, to verify for the K-TAP recipient the payment has been refunded.

Section 14. Refund. A recipient shall be due a refund in the following situations:
(1) An amount in excess of the actual overpayment is recouped;
(2) An overpayment and an underpayment is offset and a balance is owed to the recipient or
(3) A K-TAP payment is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 15. Correction of Underpayments. The following provisions shall apply to a K-TAP payment:
(1) An underpayment shall be promptly corrected to
(a) A current K-TAP recipient; or
(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred;
(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group;
(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:
(a) Month the payment is paid; or
(b) Next following month.

(2) The 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: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008 at 9 a.m. in the Cafeteria Meeting Room, CHR Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 December 1, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Jil Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Justin Dearinger, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the standards of need for and the amount of a Kentucky Transitional Assistance Program (K-TAP) payment.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish financial eligibility criteria for the K-TAP and the benefit amount to those individuals who are eligible.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the standards of need and assistance amounts for K-TAP.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by establishing the standards of need for K-TAP and K-TAP assistance amounts available to eligible applicants. The administrative regulation concurs with the Kentucky's Title IV-A of the Social Security Act (Temporary Assistance for Needy Families or TANF block grant) State Plan, 42 U.S.C. 601-619.
(2) If 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 excludes all educational income during the K-TAP eligibility process; for a child or minor parent, allows full-time school attendance to be determined by the educational institution; eliminates an informational form that has no impact to the K-TAP recipient's legal rights and makes corrections to comply with KRS Chapter 13A and ensure congruency with administrative rules governing other related and TANF programs.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to simplify and align K-TAP eligibility determinations.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its slight modification of standard of need criteria used in the K-TAP.
(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 prescribing the conditions of financial eligibility for public assistance and related payment amounts congruent with the TANF State Plan and administrative regulations governing other related and TANF programs.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP. As of June 2006, there were 22,972 families receiving K-TAP.
(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: The amendment to this administrative regulation will streamline K-TAP eligibility determination for applicants and recipients by excluding all educational income and allowing educational institutions to determine full-time school attendance for a child or minor parent.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The amendment to the administrative regulation will not create a cost to K-TAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The amendment to this administrative regulation will consider students who are in a non-standard, 5-hour program as meeting full-time school attendance requirements for a child or minor parent. This amendment also simplifies financial eligibility requirements by aligning programmatic policies and excluding all educational income, though most educational income, except that remaining for living expenses, was already excluded from calculations.

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

(a) Initially: The amendment to this administrative regulation does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A, TANF and state general funds used to meet Maintenance of Effort requirements are the sources 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: There is no increase in fees or funding required with this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 601 to 619

2. State compliance standards: KRS 194.050(1), 205.200(2), 205.210(1)

3. Minimum or uniform standards contained in the federal mandate: The provisions of the administrative regulation comply with the federal mandates.

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, 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, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.200(2), 205.210(1), 42 U.S.C. 601 to 619

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 K-TAP program has been operational since October 1996 and does not directly generate any revenue. This amendment will generate no 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? The K-TAP program has been operational since October 1996 and does not directly generate any revenue. This amendment will generate no revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The K-TAP program has been operational since October 1996. This amendment will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The K-TAP program has been operational since October 1996. This amendment will not require any additional costs in subsequent years.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support

921 KAR 2:017. Kentucky Works supportive services.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to comply with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.2003(1) requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity" means participation in an allowable activity in accordance with 921 KAR 2:370, Section 2(2)(c).

(2) "Component" means a service or activity in accordance with 921 KAR 2:370, Section 2(2)(c).

(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement, in accordance with 921 KAR 2:370, and referral for removal of barriers(someone) takes place.

(4) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(5) "improper payment" is defined by KRS 45.237(1)(d).

(6) "Kentucky Transitional Assistance Program" or "K-TAP".
means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006.

(7) "Kentucky Works" means a program, in accordance with 921 KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(8) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(9) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(10) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

Section 2. Kentucky Works Participation and Supportive Services Payment. The cabinet shall make a payment for a supportive service cost:

(1) For an individual participating in the Kentucky Works Program, except for the exclusions listed in Section 12 of this administrative regulation;

(2) Necessary for participation in an approved Kentucky Works activity; and

(3) To the extent funds are available.

Section 3. Transportation Reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation; or

(3) Component participation.

Section 4. Transportation Payment Amount and Authorization. (1) To the extent funds are available, payment for transportation shall be provided for an individual participating in an approved Kentucky Works activity.

1. Free transportation that meets the needs of the work-eligible individual is unavailable; and

2. The individual is required to incur a transportation expense in order to participate. If free transportation that meets the needs of the recipient is available, a payment for transportation shall be provided for an individual participating in an approved Kentucky Works activity, to the extent funds are available, if the individual is required to incur a transportation expense in order to participate.

(b) If a need for transportation reimbursement is determined, after receipt of verification, as required in Section 6 of this administrative regulation, a direct payment to the individual shall be made through the System Tracking for Employability Program or "STEP", as follows:

1. Fifteen (15) dollars for less than four (4) days per month;

2. Sixty (60) dollars for four (4) to sixteen (16) days per month; or

3. 100 dollars for seventeen (17) or more days per month.

(2) A payment shall be issued in accordance with 921 KAR 2:050.

(3) In precomponent, if necessary to guarantee that the Transportation arrangement shall not be lost, a transportation payment shall be provided for the period of up to:

(a) Two (2) weeks prior to the scheduled start of component activity; and

(b) One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. (1) To verify the anticipated need for a transportation expense payment, the K-TAP recipient shall provide the following verification:

(a) "TPA-33, Verification of Transportation and Participation in Education or Training Activity";

(b) "TPA-32N, Second Notice of Transportation Assistance and Participation in Education or Training Activity".

(2) A transportation payment shall not be made if:

(a) Verification listed in subsection (1) of this section is not returned by the end of the month prior to the month in which the cost will be incurred; or

(b) The work-eligible individual [participant] is not in compliance with the conditions of the work-eligible individual [participant] participation in the approved Kentucky Works activity.

Section 6. Other Supportive Services. (1) To the extent funds are available, the cabinet shall provide other supportive services to a work-eligible individual [recipient] if necessary for the individual [recipient] participation in the approved Kentucky Works activity.

(a) Component preparation;

(b) Component participation while the K-TAP case remains active; or

(c) Acceptance of a new job or retention of an existing job if the parent or other adult:

1. Has accepted employment and the start date of employment is provided, except if an item is required as a condition of being hired by the employer; or

2. Is employed.

(2) If requirements of subsection (1) of this section are met, the cabinet may approve an item or service needed by the work-eligible individual [K-TAP recipient] for participation in a Kentucky Works activity, such as:

(a) A drug screening test fee;

(b) Up to three (3) uniforms for employment, if not reimbursable by the employer;

(c) One (1) suitable interview outfit for preemployment purposes;

(d) Required clothing or shoes particular to a service, profession or company, if not reimbursable by the employer;

(e) School supplies and books;

(f) A licensing fee which includes:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) A timepiece necessary for employment or training;

(h) The cost to have a photo identification;

(i) The cost of a criminal records check fee, if required by the provider or employer;

(j) A driver's education class fee; or

(k) Tools required for employment.

(3) Payment for other supportive services shall be limited to a cumulative total of $400 per individual in a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

(4) A payment may be authorized for an eligible parent or other adult as a specified relative pursuant to Section 10 of 921 KAR 2:006.

(5) A penalized or sanctioned work-eligible individual [K-TAP recipient] shall not be eligible for other supportive services.

(6) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned work-eligible individual who later curbs the penalty. After the individual [parent or other adult] curbs the penalty or sanction, an eligible expense may be authorized.

(7) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. (1) To the extent non-TANF funding is used, to the extent non-TANF funding is [funds are] available, the purchase of the following item or service shall be allowed for a work-eligible individual [K-TAP recipient], if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid and limited to:

(a) Eye glasses or corrective lens;

(b) Dentures;

(c) Hearing aids; and

(d) Medical service or item required as a condition of employment.

Section 8. Car Repairs. (1) If a free service for car repairs, including a vocational school automotive program, is unavailable that meets the needs of the work-eligible individual [recipient], a car repair expenditure shall be provided, to the extent funds are avail-
able, if necessary for participation in the approved Kentucky Works activity of:
(a) Component preparation; or
(b) Component participation, including employment while the
K-TAP case remains active.
(2) Car repair expense shall meet the following criteria to be
considered for payment:
(a) Car repair that makes the car functional;
(b) Property tax on the vehicle;
(c) Vehicle registration;
(d) Licenses fee;
(e) Liability insurance to drive a vehicle;
(f) New or used automotive part to be purchased by the
work-eligible individual[K-TAP recipient] to make the car functional; and
(g) Other car expense needed by the work-eligible individual[K-
TAP recipient] that would allow participation in the Kentucky Works activity.
(3) Prior to the approval of a car repair expenditure listed in
subsection (2) of this section, the work-eligible individual[recipient] shall provide an estimate of the cost.
(a) An estimate of the cost; and
(b) Approval by the cabinet.
(4) Auto repair work shall:
(a) Be completed by a garage, unless the repair is completed
by a vocational school automotive program; or
(b) Be the responsibility of the work-eligible individual[K-TAP
recipient] if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.
(5) Prior to approval of a car repair expenditure, the cabinet
shall verify the work-eligible individual[participant] owns the vehi-
cle.
(6) The restrictions on authorization and verification of a sup-
portive service payment described in Section 12 of this administra-
tive regulation shall apply to a car repair expense and payment.
(7) Payment for car repair shall be limited to a cumulative total
of $500 per eligible family during a twelve (12) month period, begin-
ing with the first day of the month in which the initial payment is issued.

Section 9. Short-term Training. To the extent funds are availa-
ble, a fee for a short-term training program shall be eligible for
payment for a work-eligible individual[K-TAP recipient] if the train-
ing program is:
(1) Not eligible for federal financial aid, and
(2) Likely to lead to paid employment, [and--as] in accordance
with:
(a) The work-eligible individual[participant’s] transitional as-
sistance agreement; and
(b) [in accordance with] 921 KAR 2:370.
Section 10. Required Fees. (1) To the extent funds are available,
the following payment may be made for a work-eligible individ-
ual in compliance with Kentucky Works requirements[an eligible
recipient]:
(a) A training registration fee;
(b) Financial aid application fee;
(c) Testing fee;
(d) Application fee required by a vocational school for a speci-
fied program;
(e) Liability insurance fee;
(f) Copy of records fee;
(g) Activity fee if mandated by the institution; or
(h) Other required fee.
(2) Required fees shall not exceed $200 per payment.
Section 11. Educational Bonus. (1) An educational bonus of
$250 per individual shall be paid to a K-TAP adult or child who
reports and verifies:
(a) Receiving a:
1. High school diploma;
2. GED certificate; or
3. Postsecondary school certificate or degree; or
(b) Graduating from English as a second language class.
(2) A short-term training program shall not qualify for postse-
condary education.
(3) A K-TAP applicant or recipient shall be advised of the edu-
cational bonus and be reminded of available work incentives:
(a) During application;
(b) At recertification; and
(c) Through periodic mailings.

Section 12. Restrictions on Authorization of Supportive Service
Payments. (1) (a) To verify an expense and authorize a supportive
service payment, except as provided in Section 5 of this adminis-
trative regulation, if "PA-32, Authorization for Supportive Services
Payments," shall be completed.
(b) ["PA-32, Authorization for Supportive Services Payments"]
shall be valid for thirty (30) calendar days from the date issued by
the cabinet.
(2) A payment shall not be made for the period during which:
(a) A valid ["PA-32, Authorization for Supportive Services
Payment"] is not returned; or
(b) The work-eligible individual[participant] is:
1. Penalized for noncompliance with a Kentucky Works activity,
as specified in 921 KAR 2:370; or
2. Ineligible.
(3) A supportive service payment shall be issued in accord-
ance with 921 KAR 2:050.

Section 13. Hearings and Appeals. An applicant or recipient of
supportive services who is dissatisfied with an action or inaction on
the part of the cabinet shall have the right to a hearing in accord-
ance with 921 KAR 2:055.

Section 14. Improper Payments. The cabinet shall recover the
amount of an improper payment pursuant to KRS 45.237-241 and
205:211, including assistance paid pending the outcome of a hear-
ing, from the claimant-payee.

Section 15. Incorporation by Reference. (1) The following
material is incorporated by reference:
(a) "PA-32, Authorization for Supportive Services Payments,"
section 2:09, is incorporated by reference [4/06];
(b) "PA-33, Verification of Transportation and Participation in
Education or Training Activity," edition 1/06; and
(c) "PA-33N, Second Notice Verification of Transportation and
Participation in Education or Training Activity," edition 1/06.
(2) This material may be inspected, copied, or obtained, sub-
ject 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: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,
be held on November 21, 2008 at 9 a.m. in the Cafeteria Meeting
Room, First Floor, CHR Building, 275 East Main Street, Frankfort,
Kentucky. Individuals interested in attending this hearing shall
notify this agency in writing by November 14, 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 canceled. The hearing is open to the public. Any person
who attends will be given an opportunity to comment on the pro-
posed 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 December 1, 2008. Send written
notification of intent to attend the public hearing or written com-
ments on the proposed administrative regulation to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275
East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)
564-7905, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes supportive services for the Kentucky Works Program (KWP). KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant or Title IV-A of the Social Security Act, 42 U.S.C. 601-619.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish types of KWP supportive services available to the program's participants and related requirements. This administrative regulation sets forth these types of services and requirements in conformity with the Title IV-A State Plan.

(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 types of KWP supportive services available to KWP participants and related requirements. This administrative regulation is in conformity with the Title IV-A State Plan.

(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 eligibility criteria and financial limitations for all KWP supportive services, including transportation, other supportive services, and medical services, and in providing reimbursement to KWP participants.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to update terminology, cross-references, and forms used in the regulation. The amendment will remove forms to reduce redundancies and any confusion with another administrative regulation. The amendment will change the form used to authorize supportive services payments by allowing an entry for a store identification or invoice number to ensure payment is issued to the correct store location and by clarifying the validation period to discourage a participant or service provider from holding the form past the service's payment period. The amendment also makes technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make congruent administrative regulations governing Kentucky's Title IV-A (TANF) Programs and streamline payments for supportive services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its revisions to markdown, cross-references, and forms used for KWP supportive services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP that have agreed to participate in a required KWP activity. As of June 2008, there were 22,972 K-TAP families of which 7,640 recipients were required to participate in KWP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require an additional action by participants.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no cost to KWP participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment does not alter the availability of (or conditions for) supportive services to help KWP participants in their pursuits of work and self-sufficiency.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A (TANF) and state general funds used to meet Maintenance of Effort requirements are the funding source 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: There are no increases in fees or funding required with this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 601-619

2. State compliance standards: KRS 1944.050(1), 205.200(2), 205.2003(1)

3. Minimum or uniform standards contained in the federal mandate: The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, 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, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 1944.050(1), KRS 45.237-241, KRS 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

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 full year the administrative regulation is to be in effect: This amendment will generate no revenue in the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years. The KWP program has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(d) How much will it cost to administer this program for subsequent years? The KWP program has been operational since October 1996. This amendment will not require any additional cost in the first year.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support (Amendment)


Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" is defined by 45 C.F.R. 260.31.

(5) "Barriers" means a hardship the individual shall overcome to become employed and self-sufficient.

(6) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).

(7) "Concurrent" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(8) "Constant care" means active care for a family member living in the home by a work-eligible individual other than the time.

(9) "The family member spends sleeping; or"

(10) "in which the family household member is in full-time school attendance or in a program or activity outside the home unaaccompanied by the individual.

(11) "Disability" is defined by 42 U.S.C. 12102(2)(A). In accordance with 42 U.S.C. 12102(2), major life activities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

(12) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(13) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 251.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 251.2(n).

(14) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;

2. A general educational development (GED) program; or

3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university;

(c) A semester system in a college or university of:

1. Twelve (12) semester hours or more;

2. Six (6) semester hours or more during the summer term;

(d) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(15) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(16) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(g).

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child pursuant to 921 KAR 2.006, Section 1.

(18) "Kentucky Works" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(19) "On-the-job training" is defined by 45 C.F.R. 261.2(f).

(20) "Part-time enrollment" means enrollment with a post-secondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.

(21) "Reasonable distance" means the distance customarily available within a locality.

(22) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).

(23) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

(24) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(25) "Vocational education" means "vocational educational training", as defined by 45 C.F.R. 261.2(f).

(26) "Wage supplementation" means a component in which an employer hires a participant and receives reimbursement from the cabinet for a portion of wages paid to the participant.

(27) "Work-eligible Individual" is defined by 45 C.F.R. 261.2(h).

(28) "Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible Individual as follows:
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(a)1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to have at least a minimum of:

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents with the number of hours required of each parent as follows:
   a. Thirty-five (35) hours per week for one (1) of the parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education; and
   b. Twenty (20) hours per week for the other parent, with all twenty (20) hours in an activity pursuant to paragraph (c)1 through 4 and 6 of this subsection.

2. If the family does not receive federally funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment [progressing satisfactorily], as defined by the educational institution or program in postsecondary or vocational education not to exceed twenty-four (24) cumulative months during which the participant will not be required to participate in other activities;
8. Full or part-time enrollment, [progressing satisfactorily] as defined by the educational institution or program in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;
9. Attendance at secondary school or equivalent if the recipient:
   a. Has not completed secondary school or equivalent;
   b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;
   (o) Makes satisfactory progress as defined by the educational institution or program in accordance with 45 C.F.R. 261.2(2);
10. Provision of child care services to an individual participating in community service activities;
11. Job skills training directly related to employment; and
12. Based on the findings of the assessment, an allowable preparation activity that includes:
   a. Domestic violence counseling;
   b. Life skills training;
   c. A substance abuse program;
   d. Mental health counseling;
   e. Vocational rehabilitation;
   f. Literacy; or
   g. Adult education;
   13. Wage supplementation, which:
      a. May be available in limited areas and may expand into additional areas; and
      b. Shall not commence until the participant has signed form "K-W-230, Wage Supplementation—Program Participant Agreement".

(2) Excused absences shall:

(a) Include:
   1. Scheduled hours missed due to holidays; and
   2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and
   (b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following verification:

(a) "PA-33, Verification of Kentucky Works Participation [Transportation and Participation in Education or Training Activities]; or

(b) "PA-33N, Second Notice, Verification of Transportation and Participation in Education or Training Activity".

Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:

(a) Is a head of household;
(b) Has not obtained a high school diploma or a GED;
(c) Has not attained twenty (20) years of age; and
(d) Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month;

2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress;

2(a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:

1. A single custodial parent; and
2. Caring for a child who has not attained twelve (12) months of age.

3. The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

3(a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence or unfamily penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.

(b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 24.

4. A work-eligible individual shall be considered to be engaged in work for a month if the individual is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and
(b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c)1. 2, 3, 4, 5, 6, or 7 of this administrative regulation.

5. In accordance with 45 C.F.R. 261.2(2)(2)(D)(12)(C)(3), the cabinet shall exclude from program participation an individual providing [concurrent] care [for more than eight (8) consecutive weeks] to a disabled family member as verified by the completion of the "PA-4, Statement of Required Caretaker Services[.]

6. In accordance with 45 C.F.R. 261.2(1)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

7. An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to this section.

Section 4. Program Participation Requirements. (1) Assessment.
The cabinet or its designee shall make an assessment of the work-eligible individual's employability on the KW-200, Kentucky Works Assessment Form[3].

(b) The cabinet or its designee shall request other agencies to assist in the assessment process as needed.
(c) The assessment shall include consideration of:
1. Basic skills;
2. Occupational skills; and
3. Barriers/Concerns and other relevant factors.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the "KW-202, K-TAP Transitional Assistance Agreement[4]. This plan shall contain:
(a) An employment goal for the individual;
(b) A service to be provided by the cabinet including child care;
(c) An activity to be undertaken by the individual to achieve the employment goal; and
(d) Other needs of the family.

(3) A work-eligible individual shall be notified of a referral to a specific Kentucky Works Program activity in writing on form:
(a) KW-105, Kentucky Works Referral Form (Participant);
(b) "PA-218A, New chance Referral"; or
(c) KW-246, WEP Referral Form.

(4) In accordance with KRS 205 KRS 200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work using form "PA-611, Workforce Kentucky Customer Registration." except for a member who is:
(a) Under age eighteen (18);
(b) Age sixty (60) or over;
(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
(d) Receiving benefits based on 100 percent disability;
(e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
(f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:
(a) At the request of a work-eligible individual or a Kentucky Works participant;
(b) At the request of a service provider; or
(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.

(2) The conciliation shall be conducted by the cabinet or its designee.

(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.

(4) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form "KW-204, Conciliation Notice [Contact]."

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.

(5) At the conclusion of the conciliation period, the participant shall be notified in writing of an adverse action in accordance with 921 KAR 2:040 (the results of the conciliation on form "KW-205, Conciliation Result[5]."

Section 6. Excluded from Penalties. (1) A work-eligible individual shall be excluded from a penalty for failure to comply with the Kentucky Works Program pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:
(a) The individual is a single custodial parent who has demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:
1. Cannot locate appropriate child care;
2. Cannot locate child care at a reasonable distance from home;
3. Determines the unsuitability of informal child care; or
4. Cannot locate affordable child care arrangements;
(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;
(c) Child care is terminated through no fault of the individual;
(d) Child care does not meet the needs of the child, for example, a child with a disability;
(e) The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet;
(f) The individual is required to provide constant care, not to exceed eight (8) consecutive weeks, for a family member with a disability as documented by medical evidence using the PA-4;
(g) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;
(h) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:
1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin; or
8. Political belief;

(i) Work demand or condition renders continued employment unreasonable including:
1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;
(j) The wage rate is decreased subsequent to acceptance of employment;
(k) The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize;
(l) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the individual's circumstances.

Section 7. Penalties. (1) If a work-eligible individual fails to comply with a requirement of the Kentucky Works Program, the recipient shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the work-eligible individual:
(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:
1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of KW-202;
(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;
(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;
(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation, or
(e) Fails to register for work unless an exception in Section 4(3)(4) of this administrative regulation applies.

(2) Except for a requirement listed in paragraph (b) of this subsection, a work-eligible individual who has failed to comply with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to Section 4(3)(4) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis.

(b) Assistance to the benefit group shall be discontinued if the work-eligible individual, fails, without good cause pursuant to Section 6 of this administrative regulation, to:
1. Keep an appointment for an assessment interview; or
2. Pursuant to Section 4 of this administrative regulation; or
   a. Complete an assessment; or
   b. Register for work.
Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed. (2) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services. (3) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual. (4) An Individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of: (a) Race; (b) Color; (c) Religion; (d) Sex; (e) National origin; (f) Age; (g) Disability; or (h) Political belief or affiliation. (5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET-241, WEP Training Site Agreement [KWET-240, Work Experience Training Program Participant Agreement]. (6) A training site agency shall: (a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet; (b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the: 1. Hours of nonover-time work; 2. Wages; or 3. Employment benefits; (c) Comply with 42 U.S.C. 12101 to 12213; (d) Report a personnel problem to the departmental representative designated by the cabinet; (e) Maintain accurate time and attendance records daily for a WEP participant; (f) Verify time and attendance records for a WEP participant on Form PA-33, to ensure the WEP participant’s compliance with subsection (7) of this section; (g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site; (h) Immediately report an injury to the designated representative; (i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services; (j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity; (k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to Form PA-221, WEP Training Site Agreement, except as authorized by law or by the WEP participant; (l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity; (m) Provide: 1. Sufficient training to ensure development of appropriate skills; 2. New task after mastery of a skill; and 3. Adequate participation instruction and supervision at all times; (n) Provide the participant a safe training place; (o) Assure the participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant; (p) Provide adequate material to complete a training activity in a safe environment; and (q) Sign form KWET-241 with the cabinet and the participant containing a statement of: 1. The conditions established by subsections (1) through (10) of this section; and 2. The period covered by the agreement, including the required weekly number of hours of participation. (7) The WEP participant shall submit form PA-33 completed monthly by the WEP provider pursuant to subsection (6)(e) and (f) of this section. (8) If an amendment is made to the agreement, a new form KWET-241 shall be issued [Changes to the KWET-241 shall be established in writing onto form KWET-244, WEP Training Site Agreement Amendment]. (9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241 [KW-245, Notice of WEP Discontinuance]. (10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "KW-105, Kentucky Works Referral Form—Participant", edition 10/06; (b) "KW-200, Kentucky Works Assessment Form", edition 2/09 [4/06]; (c) "KW-202, K-TAP Transitional Assistance Agreement", edition 2/09 [4/06]; (d) "KW-204, Conciliation Notice/Contact", edition 2/09; (e) "KW-206, Conciliation Results", edition 10/06; (f) "KW-211, Noncompliance Contact", edition 10/06; (g) "KW-230, Wage—Supplemental Program—Participant Agreement", edition 10/06; (h) "KW-241, WEP Training Site Agreement Amendment", edition 1/06; (i) "KW-245, Notice of WEP Discontinuance", edition 10/06; (j) "KW-246, WEP Referral Form", edition 10/06; (k) "KW-249, Work Experience Training Program Participant Agreement", edition 1/06; (l) "KW-241, WEP Training Site Agreement", edition 10/06; (m) "PA-4, Statement of Required Caretaker Services", edition 10/06/06; (n) "PA-33, Verification of Kentucky Works Participation [Transportation and Participation in Education or Training Activity]", edition 2/09/06; (o) "PA-221, Second Notice Verification of Transportation and Participation in Education or Training Activity", edition 11/06; (p) "PA-218A, New Change Referral", edition 10/06; and (q) "PA-511, Workforce Kentucky Customer Registration", edition 1/06.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008 at 9 a.m. in the Cafeteria Meeting Room, CHR Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending the hearing should notify this agency in writing by November 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 by the participants. 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 December 1, 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: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical requirements of activities allowed under the Kentucky Works Program (KWP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.

(c) How the administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformance with federal statutes and regulations. This administrative regulation conforms to the content of the authorizing statutes by establishing the technical requirements and allowed activities of the Kentucky Works Program (KWP). The KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Title IV-A of the Social Security Act (a.k.a., the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619). This administration regulation sets forth these standards in conformance with the Title IV-A or TANF State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation and penalties for failure to participate without good cause.

(2) If 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 Kentucky Works Program is the work program for work-eligible individuals in Kentucky Transitional Assistance Program (K-TAP) cases. This amendment aligns KWP with federal requirements by excluding those individuals who receive Social Security Disability Insurance (SSDI) benefits from participating in Kentucky Works; relaxing restrictions placed on parents who are exempt from participation in KWP due to the care of a disabled family member; converting the ten day excess absence policy to an hourly basis for enhanced flexibility; allowing those pursuing a four-year degree to count as participating in the KWP; removing the criteria for factory programs as a part-time requirement for educational activities; and making technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the programmatic changes contained within the new federal regulations implementing the Deficit Reduction Act (DRA) of 2005. The DRA reauthorized the TANF program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619, Pub. L. 109-171, the Deficit Reduction Act of 2005 and related federal regulations that authorized the TANF program.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.00(2) requires the Cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformance with federal statutes and regulations. This administrative regulation establishes technical eligibility requirements for the KWP program. The amendment assists in the effective administration of the statute through its incorporation of federal requirements necessitated by TANF's reauthorization.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in KWP. As of June 2008, there were 22,972 families receiving K-TAP and 7,840 individuals required to participate in KWP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action is needed by the regulated entities to comply with this administrative amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While the amendment is conforming in nature, and there are no anticipated accrued benefits for the identified entities, the amendment provides clarification to impacted entities regarding their participation requirements.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A of the Social Security Act and state general funds used to meet Maintenance of Effort requirements are the sources 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: There are no increases in fees or funding required with this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. 601 to 619q2.


3. Minimum or uniform standards contained in the federal mandate.
The provisions of the administrative regulation comply with the Federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,
than those required by the federal mandate? This administrative regulation does not impose stricter, 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, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601 to 616, Pub. L. 109-171

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. No.

5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue in the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This program has been operational since October 1996. This amendment will not require any additional cost in the first year and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(d) How much will it cost to administer this program for subsequent years? This program has been operational since October 1996. This amendment will not require any additional cost in the first year and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support

(Compliance)

921 KAR 3:020. Financial requirements.


STATUTORY AUTHORITY: KRS 194A.010, 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010 requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer the Food Stamp Program within the state. This administrative regulation establishes the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program. In addition, 7 U.S.C. 2014 allows states to exclude additional types of income and resources if these specific types of income and resources are not counted in the state's Temporary Assistance for Needy Families (TANF) or Medicaid Programs.

Section 1. Financial Eligibility Requirements. (1) As established in 7 C.F.R. 273, promulgated by the Food and Nutrition Service of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

(a) Income limitations; and
(b) Resource limitations.

(2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income.

(3) The income eligibility standards shall be:

(a) Derived from the federal income poverty guidelines as defined in 42 U.S.C. 6902(2) for the forty-eight (48) contiguous states; and
(b) Adjusted annually each October 1, as published in the Federal Register.

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following:

(1) Wages earned by a household member, including wages received by a striker as defined in 921 KAR 3:035, Section 5(10);
(2) The gross income of a self-employment enterprise, including the total gain from the sale of capital goods or equipment related to the business, excluding the cost of doing business;
(3) Training allowance from vocational and rehabilitative programs recognized by federal, state, or local governments, to the extent that they are not reimbursements;
(4) Volunteers in Service to America; (VISTA) payments under 42 U.S.C. 4951 to 4960 shall be considered earned income unless specifically excluded in accordance with 7 C.F.R. 273.8(9)(1)(iii);
(5) The earned or unearned income of an ineligible household member or nonhousehold member as described in 921 KAR 3:035, Section 5(3) and (4); and
(6) Assistance payments from federal or federally-aided public assistance including:

(a) Supplemental security income or "SSI";
(b) Kentucky Transitional Assistance Program or "K-TAP" in accordance with 921 KAR 2:018;
(c) General assistance programs;
(d) Other assistance programs based on need, or
(e) Kinship care in accordance with 922 KAR 1:130;
(7) Annuities;
(8) Pensions;
(9) Retirement, veteran's, or disability benefits;
(10) Worker's or unemployment compensation;
(11) Strike pay;
(12) Old-age survivors or Social Security benefits;
(13) Except as excluded in Section 3(16) of this administrative regulation, foster care payments for a child or adult;
(14) Gross income derived from rental property, minus the cost of doing business. This income shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;
(15) Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense;
(16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;

- 1350 -
(17) A portion of the following, that is not excludable as specified in Section 3(6) of this administrative regulation:
(a) Scholarship;
(b) Education grant;
(c) Fellowship;
(d) Deferred payment education loan;
(e) Veteran's educational benefit; or
(f) Income received from a work study program which is not administered by the U.S. Commissioner of Education or the Bureau of Indian Affairs, in accordance with 7 U.S.C. 2014;

(18) A payment from:
(a) A government sponsored program;
(b) A royalty; (and)
c) Similar direct money payments from a source that may be construed as a gain or benefit;

(19) Money withdrawn from a trust fund;
(20) The amount of monthly income deemed to a sponsored alien as established in 921 KAR 3.035, Section 5(11);
(21) The portion of means tested assistance monies:
(a) From:
1. Federal welfare program;
2. State welfare program; or
3. Local welfare program; and
(b) Withheld for the purpose of recouping an overpayment resulting from the household's intentional failure to comply with program's requirements;
(22) Earnings of an individual who is participating in an on-the-job-training program under 29 U.S.C. 2801-2931[29 U.S.C. 2801 et seq.] unless the individual is under:
(a) Nineteen (19) years of age; and
(b) The parental control of another adult member; and
(23) An assistance payment for child care or attendant care:
(a) Received from an outside source; and
(b) Paid to one (1) household member:
1. From another household member; or
2. On behalf of another household member.

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money:
(a) Withheld from an assistance payment;
(b) From earned income;
(c) From another income source; or
(d) Received from another income source that is voluntarily or involuntarily returned to repay a prior overpayment received from that income source, except as defined in Section 2(21) of this administrative regulation;
(2) Child support income shall be considered as follows:
(a) A child support payment shall be excluded if:
1. Received by a recipient of the K-TAP or Kinship Care Program; and
2. It is transferred to the Child Support Enforcement Program in the Department for Income SupportDivision of Child Support to maintain eligibility in K-TAP or Kinship Care Program; and
(b) A portion of child support money returned to the household receiving K-TAP or Kinship Care Program benefits by the cabinet shall not be excluded;
(3) A gain or benefit that is not in the form of money payable directly to the household;
(4) A money payment that is not legally obligated and otherwise payable directly to a household, but is paid to a third party for a household expense;
(5) Income:
(a) Received:
1. In the certification period; and
2. Too infrequently or irregularly to be reasonably anticipated; and
(b) Not in excess of thirty (30) dollars per quarter;
(6) Educational income including grants, loans, scholarships, and work study income except as defined Section 3(21) of this administrative regulation:
(a) Including:
1. A deferred payment educational loan on which repayment does not begin within sixty (60) days after receipt;
A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;

(17) Money received under 26 U.S.C. 3507 of the Internal Revenue code, as an advanced payment of earned income credit;

(18) Interest or dividend income, in accordance with 7 U.S.C. 2014;

(19) Additional wages received by a member of the military while deployed to a designated combat zone, in accordance with 32 U.S.C. 1823;

(20) Income from AmeriCorps programs, except for Volunteers in Service to America, as specified in Section 2(4) of this administrative regulation, in accordance with 42 U.S.C. 12501-12506[et seq.];

(21) Income from a Youthbuild program, unless the income is from on-the-job training, as defined in Section 2 of this administrative regulation, in accordance with 29 U.S.C. 2931; and

(22) Income associated with the fulfillment of an approved Plan for Achieving Self-Support (PASS), in accordance with 42 U.S.C. 1382a(b)(4)(B)(iv).

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to a household whose income falls at or below the applicable standards as established by the Food and Nutrition Service in 7 C.F.R. 273 that are set forth below:

(1) A household that contains a member who is elderly or has a disability as defined in 921 KAR 3:010, Section 1(11) or (13), shall have its net income compared to 100 percent of the federal income poverty guidelines.

(2) A household in which a member receives or is authorized to receive cash, in-kind, or other benefits funded under TANF[Temporary Assistance to Needy Families] or TANF pursuant to 42 U.S.C. 601-699[42 U.S.C. 601-699], shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(4).

(3) A household in which all members are recipients of SSI shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(3).

(4) Other households shall have their:

1. Gross income compared to 130 percent of the federal income poverty guidelines; and

2. Net income compared to 100 percent of the federal income poverty guidelines.

A household’s gross income as calculated pursuant to paragraph (a) of this subsection shall be the household’s total income:

1. After excluded income has been disregarded in accordance with Section 3 of this administrative regulation; and

2. Before any deductions in accordance with Section 5 of this administrative regulation have been made. Other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A monthly standard deduction per household, based on household size, as established in 7 U.S.C. 2014, that shall be periodically adjusted by the Food and Nutrition Service to reflect a change in the cost of living for a poor period of time as determined by the Food and Nutrition Service pursuant to 7 C.F.R. 273;

(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;

(3) A payment:

(a) For the actual cost for the care of:

1. A child; or

2. Other dependent; and

(b) Not to exceed:

1. $200 per month per dependent child under age two (2); and

2. $150 per month for each other dependent; and

(e) Necessary for a household to:

1. Seek, accept, or continue employment;

2. Attend training; or

3. Pursue education preparatory to employment;

(4) The cabinet shall use a homeless standard allowance of a shelter expense for a household in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses;

(5) An allowable medical expense in excess of thirty-five (35) dollars per month incurred by a household member who meets the definition of being elderly or having a disability as defined in 921 KAR 3:010, Section 1(11) and (13):

(a) Including:

1. Medical and dental care;

2. Hospitalization or outpatient treatment and nursing care;

3. Medication and medical supplies;

4. A health insurance premium;

5. A hospitalization insurance premium;

6. Dentures, a hearing aid, eyeglasses, prosthetics; or

7. Similar medical expenses; and

(b) Excluding special diet costs;

(6) Actual child support payment made by a household member shall be allowed as a deduction if:

(a) The household member is legally obligated to pay child support and

(b) Verification is provided showing a payment is currently being made.

Section 6. Monthly Shelter Cost Deduction. (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household’s income after allowable deductions have been made.

(2) The shelter deduction shall not exceed the current shelter maximum, except that a household shall not be subject to the maximum if a member is:

(a) Elderly; or

(b) Disabled.

(3) The excess shelter maximum shall be adjusted periodically by the Food and Nutrition Service to reflect change in the cost of living.

(4) Allowable monthly shelter expense shall include the following:

(a) Continuing charge for the shelter occupied by the household including:

1. Rent;

2. Mortgage;

3. Payment on mobile home loan;

4. Condominium and association fees;

5. Interest on a payment; and

6. Similar charge leading to ownership of the shelter;

(b) Property tax;

(c) State and local assessment;

(d) Insurance on the structure itself;

(e) The cost of:

1. Heating and cooking fuel;

2. Cooling;

3. Electricity;

4. Water and sewage;

5. Garbage and trash collection fee;

6. Telephone standard deduction; and

7. A fee charged by a utility provider for the initial installation of the utility;

(f) The shelter cost for the home if:

1. Temporarily unoccupied by the household because of:

a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss;

2. The current occupant is not claiming shelter cost for food stamp purpose; and

3. The home is not leased or rented during the absence of the household; and/or
(g) A charge for the repair of the home if substantially damaged or destroyed by fire, flood, or other natural disaster, except to the extent the cost is reimbursed by:
   1. A private or public relief agency;
   2. Insurance; or
   3. A similar source.
(5) The standard utility allowance shall be used to calculate shelter cost for a household:
   (a) Receiving Low Income Home Energy Assistance Program benefits; or
   (b) Incurring cost, separate from its rent or mortgage payment, for:
      1. Heating; or
      2. Cooling (by air conditioning unit only).
(6) The standard utility allowance shall be adjusted periodically.
(7) If the household is not entitled to the utility standard or homeless standard allowance, it shall be given the basic utility allowance in accordance with 7 U.S.C. 2014, if the household is billed for two (2) of the following:
   (a) Electricity (nonheating and noncooling);
   (b) Water or sewage;
   (c) Garbage or trash;
   (d) Cooking fuel; or
   (e) Telephone service.
(8) The basic utility allowance shall be adjusted annually.
(9) A household whose only expense is for telephone service shall be given a telephone standard.
(10) A household not entitled to a standard specified in subsection (7) or (9) of this section may use actual utility expense to calculate shelter deduction.

Section 7. Resources. (1) Uniform national resource standards of eligibility shall be utilized pursuant to 7 C.F.R. 273.8.
(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 8 of this administrative regulation exceed:
   (a) $3000 for a household member; or
   1. With a disability as defined in 921 KAR 3:010, Section 1(11); or
   2. Sixty (60) years or older; or
   (b) $2000 for any other household.
(3) A household that is categorically eligible in accordance with 921 KAR 3:030, Section 6 shall meet the food stamp resource requirement.

Section 8. Exempt Resources. The following resources shall not be considered in determining eligibility:
(1) All resources, in accordance with 7 U.S.C. 2014; (2) Household goods; (3) Personal effects; (4) A burial plot; (5) The cash value of life insurance policies; (6) In accordance with 7 U.S.C. 2014:
   (a) A tax-exempt retirement account; (b) A prepaid burial account; (c) A licensed or unlicensed vehicle; (d) A recreational vehicle; (e) A resource deemed to an alien from a sponsor or spouse of a sponsor; (f) Principal and accrued interest of an irrevocable trust during a period of unavailability; (g) A tax-exempt educational account; and (h) Another resource that is excluded for food stamp purposes; (7) Funds in an individual retirement account, pension, retirement, or deferred compensation during the period of unavailability; (7) A prepaid burial account, in accordance with 7 U.S.C. 2014; (8) In accordance with 7 U.S.C. 2014 a licensed or unlicensed vehicle; (9) A recreational vehicle, in accordance with 7 U.S.C. 2014; (10) A resource deemed to an alien from a sponsor or spouse of a sponsor, in accordance with 7 U.S.C. 2014; (11) Principal and accrued interest of an irrevocable trust during a period of unavailability, in accordance with 7 U.S.C. 2014; (12) A government payment that is designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction and, if funds are not used as intended; (13) A resource, of which the cash value is not accessible to the household; (14) A resource that has been prorated as income; (15) A resource that is excluded for food stamp purposes in accordance with 7 U.S.C. 2014; (16) Income that is withheld by the employer to pay a certain expense directly to a third party as a vendor payment, to the extent that the remainder of the withheld income is not accessible to the household at the end of the year; and (17) The earned income tax credit income received by a member of the household for a period of twelve (12) months from receipt if the member was participating in the Food Stamp Program:
   (a) At the time the credit was received; and
   (b) Continuously during the twelve (12) month period of exclusion.

Section 9. Transfer of Resources. A household that has transferred a resource knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 10. Failure to Comply with Other Programs. (1) Except as provided in subsection (2) of this section, the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.
(2) If the benefits of a household are reduced as defined in a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedure as defined in 921 KAR 3:042, Section 7.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: September 24, 2008
FILED WITH LRC: September 28, 2008 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008 at 8 a.m. in the Cafeteria Meeting Room, CHR Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by November 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 December 1, 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: Justin Dearinger
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the financial eligibility requirements used by the Cabinet in the administration and provision of Kentucky's Food Stamp Program.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards of financial eligibility for the Food Stamp Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the financial eligibility requirements for Kentucky’s Food Stamp Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the financial eligibility requirements used by the Cabinet in the administration and provision of Kentucky’s Food Stamp Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment modifies financial eligibility requirements for Kentucky’s Food Stamp Program by removing the cap on dependent care deductions and excluding tax-preferred retirement and educational accounts and educational assistance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to conform to the federal requirements of the Food, Conservation, and Energy Act of 2008 and to align Food Stamp policy concerning educational assistance with the state’s TANF and Medicaid policy.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by modifying Kentucky’s Food Stamp Program’s financial eligibility requirements to adhere to the Food Stamp Act of 1977 as amended by the Food, Conservation, and Energy Act of 2008.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing uniformity with and timely implementation of recently enacted federal legislation impacting Kentucky’s Food Stamp Program’s financial eligibility requirements.

(3) List the type and number of individuals, organizations, or state and local governments affected by this administrative regulation: All applicants and recipients participating in the Food Stamp Program in the Commonwealth are affected by this administrative regulation. There are approximately 286,876 households and 639,394 individuals currently participating.

(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 not require any additional actions on the part of Food Stamp applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Neither the amendment nor the administrative regulation involves a cost to a Food Stamp Program applicant or recipient.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Food Stamp Program applicants and recipients will benefit from this regulatory amendment through its relaxation of financial eligibility requirements as authorized under the Food, Conservation, and Energy Act of 2008.

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

(a) Initially: No additional state funding is required.

(b) On a continuing basis: No additional state funding is required.

(5) What is the source of the funding to be used for the implementation and enforcement of the administrative regulation: Food Stamp Program benefits are 100 percent federally funded through the Department of Agriculture. Program administration is funded 50% federal and 50% state, which has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010, 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2014, P.L. 110-246.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this administrative regulation 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:
Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits to eligible households.
(2) In issuing benefits the cabinet shall insure that:
   (a) Only certified households receive benefits;
   (b) Program benefits are distributed in the correct amounts; and
   (c) Benefit issuance and reconciliation activities are properly conducted and accurately reported to the Food and Nutrition Service.
(3) The cabinet shall advise the recipient at time of application that:
   (a) After twelve months of EBT account inactivity, unused benefits shall be expunged in accordance with Section 6 of this administrative regulation; and
   (b) Expunged benefits shall be:
      1. Applied for benefit overpayments in accordance with 621 KAR 3:050; or
      2. Returned to the Food and Nutrition Service of the U.S. Department of Agriculture.
(4) The cabinet shall maintain issuance records for a period of three years from the month of origin.

Section 2. Benefit Delivery. (1) Benefits shall be provided to an eligible household through an EBT system.
(2) An EBT card and instructions for use[a-PIN] shall be mailed:
   (a) Directly to each eligible household; or
   (b) To the local office for pick up, if requested by the household.

Section 3. Benefit Availability. (1) Benefits shall be available to a household the day after an approval is processed, if the case is a:
   (a) New application;
   (b) Reapplication; or
   (c) Recertification, which is:
      1. Initiated after the 15th day of the month; and
      2. Approved during the benefit month.
(2) An ongoing case shall have benefits credited to the EBT account and available to the household within the first ten days of the benefit month.

Section 4. EBT Card Replacement. (1) The cabinet shall provide a replacement EBT card to a household within five days, if the EBT card is reported:
   (a) Lost;
   (b) Stolen; or
   (c) Damaged.
(2) An EBT card shall be deactivated when a household requests the need for card replacement.

Section 5. Benefit Replacement. (1) If the household receives an EBT card, if the EBT card is lost or stolen and the EBT account is reduced, the cabinet shall not provide replacement benefits;
(2) If food purchased with food stamp benefits is destroyed in a household misfortune, the cabinet shall provide replacement benefits if:
   (a) The loss is reported:
      1. Orally or in writing; and
      2. Within ten days of the household misfortune; and
   (b) A household member or authorized representative signs a statement attesting to the loss.
(3) If the household is eligible for replacement benefits, the replacement shall equal the:
   (a) Amount of the loss to the household, not to exceed the maximum of one month's benefits for the household requesting replacement; or
   (b) Full value of the benefits, if the replacement includes restored benefits.
(4) The cabinet shall not provide a replacement due to a household misfortune if:
   (a) A disaster declaration has been issued by FNS; and
   (b) The household is eligible for disaster food stamp benefits.
(5) There is no limit on the number of benefit replacements for food:
   (a) Purchased with food stamp benefits; and
   (b) Destroyed in a household misfortune.
(6) If available documentation indicates that a household's request for benefit replacement appears fraudulent, the cabinet shall:
   (a) Copy the replacement; or
   (b) Delay the replacement; and
   (c) Inform the household.
   1. Of its right to a fair hearing to contest the denial or delay of a replacement; and
   2. That a replacement shall not be made while the denial or delay is being appealed.

Section 6. Account Inactivity. (1) If an EBT account has not been debited in twelve consecutive months, the cabinet shall:
(2) Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is twelve consecutive months in the past; and
(3) Notify the household in writing:
   1. That the household's EBT account has not been debited in the last nine months; and
   2. Of the amount of EBT benefits that have been expunged
(4) If a recipient debits the EBT account, the expungement process shall cease:
   (3) Expunged benefits shall not be retrieved.
   (4) An EBT card shall be deactivated if, within a ten-month period, the EBT account has not been:
      (a) Credited; or
      (b) Debited.
(5) If an EBT account record is removed if, within a twelve-month period, the EBT account has not been:
      (a) Credited; or
      (b) Debited.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: September 24, 2008
FILED WITH LRC: September 29, 2008 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008 at 9 a.m. in the Cafeteria Meeting Room, CHR Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 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 December 1, 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 B W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7673.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deenager

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the procedures for benefit delivery used by the Cabinet in the administration of the Food Stamp Program.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish uniform standards for Electronic Benefit Transfer (EBT) operation in the administration of the Food Stamp Program.
(c) How this administrative regulation conforms to the content of the authorizing statute(s): In accordance with KRS 194A.050(1), the Cabinet has responsibility under 7 C.F.R. 274.14 to administer the Food Stamp Program for Kentucky and deliver benefits by an EBT system per 7 C.F.R. 274.12. This administrative regulation conforms to the authorizing statute by prescribing the EBT system for Kentucky’s Food Stamp program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the issuance procedures (EBT) for Kentucky’s Food Stamp Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by extending the timeframe benefits are expunged from an unused EBT account from nine to twelve months, and removing obsolete language concerning the deactivation of an EBT card and EBT account records.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with requirements of the Food, Conservation, and Energy Act of 2008 and to remove language relating to EBT cards that is no longer applicable.
(c) How the amendment conforms to the content of the authorizing statute(s): This amendment conforms to the authorizing statute by aligning benefit policy with federal requirements.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statute by complying with the requirements of the Food, Conservation, and Energy Act of 2008.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants and recipients participating in the Food Stamp Program in the Commonwealth are affected by this administrative regulation. There are approximately 286,876 households (939,394 individuals) currently participating.

(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 not require any additional actions on the part of Food Stamp Program applicants or recipients.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 274.12
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation are applied in a like manner on a statewide basis in accordance with 7 C.F.R. 274.12.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, that those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or 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 Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190A.050 (1), 7 C.F.R. 274.1, 274.12, Pub.L. 110-246
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.

- 1356 -
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 state or local government during the first year.

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

c) How much will it cost to administer this program for the first year? This administrative regulation will initially cost the administrative body approximately six hundred dollars ($600.00) to administer this change.

d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this administrative regulation for subsequent years.

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

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

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


STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(6].

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. [KRS 199.567(4) requires the department to promulgate rules implementing Title IV-E adoption assistance provisions in accordance with the federal regulations promulgated by the cabinet.] This administrative regulation establishes guidelines for the implementation of the state-funded adoption assistance program for children who may otherwise grow up in foster care [and federal Title IV-E adoption assistance].

Section 2. Adoptee Assistance Eligibility Criteria. (1) The secretary shall decide whether to pay and provide adoption assistance in accordance with KRS 199.555(5) if:
(a) The child is a special needs child as described in subsection 2 of this section;
(b) The child is committed to the cabinet; and
(c) The prospective adoptive parent will only be able to care for the child with an adoption subsidy based on whether it is in the best interest of a child.
(2) A special needs child is a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 193.555(1) [or 42 U.S.C. 672(6)], because the child:
(a) Has a physical or mental disability;
(b) Has an emotional or behavioral disorder;
(c) Has a recognized risk of physical, mental, or emotional disorder;
(d) Is a member of a sibling group in which the siblings are placed together;
(e) Has had previous adoption disruption or multiple placements;
(f) Is a member of a racial or ethnic minority and two (2) years old or older; or
(g) Is age seven (7) or older and has a significant emotional attachment or psychological tie to his foster family and
2. The cabinet has determined that it would be in the child's best interest to remain in foster care with the same family.

(3) Section 3. Eligibility: (1) A special needs child [considered for state-funded adoption assistance] shall:
(a) Be committed to the Cabinet for Health and Family Services;
[b) Not have any custody or legal claim to the child;
(c) Be under age eighteen (18); and
(d) Not be eligible for federal Title IV-E adoption assistance in accordance with KRS 192 KAR 1:050, with the exception of extraordinary medical expenses pursuant to Section 8(1) of this administrative regulation [he custody;
(2) A special needs child considered for federal Title IV-E adoption assistance shall:
(a) Meet the eligibility criteria established in 42 U.S.C. 673 at the time the adoption proceedings are initiated; and
(b) Have not a parent with a legal claim to the custody.]

Section 3. [4] Parental Standards. A parent[Parent] receiving a child eligible for adoption assistance payments shall meet the same standards as those applied to other adoptive applicants in accordance with:
(1) 922 KAR 1:350; or
(2) 922 KAR 1:310.

Section 4. [5] Adoption Placement Agreement. (1) Prior to placing a child for adoption, the prospective[Parent] adoptive parent and the cabinet[Secretary] shall review and sign the adoption[en-
(a) Adoptive] placement agreement to set forth the terms of a child's placement with the prospective adoptive parent.
(2) The adoption placement agreement shall advise the prospective adoptive parent of:
(a) Special needs of the child;
(b) Cabinet's expectations; and
(c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. Prior to finalization of the adoption, the prospective adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement in accordance with KRS 199.555(5) that shall:
(1) Determine the nature and amount of the adoption subsidy and
(2) Remain in effect until suspended or terminated in accordance with Section 6 of this administrative regulation i.e., the child's adoption has not been finalized; and
(b) Adoption assistance agreement to set forth:
(1) Nonrecurring adoption expenses, prior to finalization of the adoption, if such expenses will be incurred by the adoptive parent during the adoption of a special needs child, in accordance with
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

KRS 199.555(6) or 45 C.F.R. 1356.41; and

2. The scope and limits of the adoption assistance, prior to finalization of the adoption, in accordance with KRS 199.555(6) or 45 C.F.R. 1356.40(b).

3. If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(i)(I), the requirement of Section (1)(a) of this section shall be waived:

4. The adoption assistance shall begin on the date that the
(a) The foster-care provider agreement indicates the child’s date of placement; or
(b) Order of adoption is entered
4. The amount of state-funded adoption assistance or federal Title IV-E adoption assistance shall not exceed the amount which would be paid for foster-care maintenance for the same child in accordance with KRS 199.555(4) or 42 U.S.C. 673(a)(3), including medically fragile, specialized medically fragile, and care plus resource home per diem reimburments established by the Department for Community Based Services. A child placed in therapeutic foster care, as described in KAR 1-310, shall not be eligible to receive adoption assistance to exceed a care plus resource home per diem reimbursement established by the Department for Community Based Services.

Section 6. Adoption Assistance Suspension and Termination.

(1) The federal Title IV-E Adoption Assistance. (1) Unless a circumstance in accordance with subsection (2) of the section is met, federal Title IV-E adoption assistance shall continue in accordance with KRS 199.555 and 42 U.S.C. 673(a)(4) until the child reaches age:

(a) Eighteen (18), or
(b) Twenty-one (21), if the child is determined to have a disability in accordance with subsection (3) of this section.

(2) In accordance with KRS 199.555 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance shall be terminated if the
(a) Adoptive parent:
1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;
2. Becomes deceased;
3. Requests discontinuation of the adoption assistance;

(b) Special needs child:
1. Becomes deceased;
2. Marries;
3. Gains full-time employment;
4. Is considered an emancipated minor;
5. Is inducted into military service;
6. Is determined to be no longer a special needs child;

(3) Disability determination.

(a) In accordance with KRS 199.555 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child’s federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382a(e)(3) by either the:
1. Social Security Administration;
2. Medical review team of the cabinet;
3. Medical review team of the medical review team
(b) The factors to be considered in making a child’s disability determination shall include:
1. The child’s medical history and subjective complaint regarding an alleged physical or mental disability; illness; or impairment; and
2. Competent medical testimony relevant to whether:
(a) A physical or mental disability, illness, or impairment exists; and
(b) The disability, illness, or impairment is sufficient to reduce the child’s ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered in making a determination shall include the child’s:
1. Age;
2. Employment history;
3. Educational background;
4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child’s ability to support and care for self;

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the Secretary and the:
1. Child, if the child is age eighteen (18) or older;
2. Adoptive parent, if the child is under age eighteen (18);

(f) In accordance with 42 U.S.C. 673(a), an adoptive parent shall be responsible for notifying the cabinet of any change in circumstances to avoid overpayment in accordance with subsection (2) of this section.

(6) Federal Title IV-E adoption assistance may include:
(a)Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child, who is considered a special needs child;
(b) Pre-adoptive subsidy;
(c) Post-adoptive subsidy

Section 7. State-funded Adoption Assistance.

(1) Unless a circumstance in accordance with subsection (2) or (3) of this section is met, state-funded adoption assistance shall continue in accordance with KRS 199.555 until the child reaches:

(a) Age eighteen (18); or
(b) If the child is enrolled in high school or equivalent;

1. Age nineteen (19); or
2. The month of high school graduation or equivalency receipt, if the child’s graduation or receipt of equivalency precedes the child’s 18th birthday.

(2) The cabinet shall temporarily suspend state-funded adoption assistance payments during the period of time the adopted child:

(a) Resides in:
1. Foster care as defined by KRS 620:020(5);
2. A residential treatment facility as defined by KRS 620:020(11);
3. A psychiatric residential treatment facility as defined by KRS 216B.450(5);
4. A hospital as defined by KRS 205.639(2) or (3) beyond thirty (30) consecutive calendar days;
5. Detention: (i) As defined by KRS 600.020(20);

(ii) Outside the adoptive home; and

(iii) For a period of thirty (30) calendar days or more;
6. Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care and support for the child’s special needs from a local, state, or federal public agency.

(2)(5) State-funded adoption assistance payments shall be terminated in accordance with KRS 199.555(6) if the

(a) Adoptive parent:
1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;
2. Becomes deceased;
3. Requests discontinuation of the adoption assistance payments;

(b) Special needs child:
1. Become deceased;
2. Marries;
3. Gains full-time employment;
4. Is considered an emancipated minor; or
5. Is inducted into military service;

6. Is reached age eighteen (18); or
7. If the child is enrolled in high school, reaches:
1. Age nineteen (19); or
2. The month of the child’s high school graduation, if the child’s graduation precedes the child’s 18th birthday.

Section 8. Adoption Assistance Payments.

(1) In accordance with KRS 199.555(6), an adoptive parent shall be responsible for notifying the cabinet of any circumstance to avoid overpayment in accordance with subsection (2) or (3) of this section.

(6) State-funded adoption assistance payments may include:
(a) Payment for additional medical expenses related to the child’s special needs that:
1. Existed prior to the adoption; and
2. Are not reimbursable by another source; 
(b) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child; and
(c) An adoption subsidy.
(2) An adoption assistance payment shall begin on the date that the adoption placement agreement and adoption assistance agreement are signed by the adoptive parent and the cabinet.
(3) The amount of the state-funded adoption assistance payment shall not exceed the amount paid for foster care maintenance for the same child, in accordance with KRS 199.555(7), including medically fragile, specially adapted medically fragile, and, care plus resource home per diem reimbursements established by the Department of Community Based Services.
(4) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance payments in excess of a care plus resource home per diem reimbursement established by the Department for Community Based Services [preadoptive subsidy; or
(d) Preadoptive subsidy.]

Section 8. Annual Family Contact. (1) Annual contact with the adoptive family shall be made by mail or home visit to determine that the:
(a) Child remains in the adoptive home;
(b) Parent continues to provide care and support for the child; and
(c) Adoption assistance payments continue (continues) to meet the special needs of the child.
(2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail:
(a) If
1. The adoptive parent requests a home visit;
2. The special needs of the child change, as indicated by the adoptive parent;
3. Attempts to update information by additional mail or phone contact have failed; or
4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or
(b) In accordance with 922 KAR 1:330.

Section 9. Adoption Assistance Renegotiation. (1) Renegotiation of an adoption assistance agreement:
(a) May be requested by the cabinet or the adoptive parent before or after the adoption is final; and
(b) Is contingent on compliance with Sections 2(2), 6, 8, and 11 of the administrative regulation. The cabinet may renegotiate adoption assistance before or after the adoption is finalized in accordance with KRS 199.555(6), (8), and 42 U.S.C. 673, and if there is a change in the:
(1) Child’s special needs; or
(2) Circumstances of the adoptive parent, including a situation that negatively affects the stability of the placement;
(2) If conditions in KRS 199.555(6) are met, the cabinet shall reimburse extraordinary medical expenses requested by an adoptive parent of a special needs child to prevent disruption of the adoption:
(a) After the adoption is final; and
(b) Through state-funded adoption assistance [may be reimbursed through state-funded adoption assistance if conditions in KRS 199.555(6) are met].
(3) A move of the special needs child or the adoptive parent of the special needs child out of the state or country shall have no effect on the child's eligibility for state funded adoption assistance payments.
(4) If an adoption assistance payment is changed through renegotiation the cabinet and adoptive parent shall sign a new adoption assistance agreement in accordance with 42 U.S.C. 673(5)(3); an adoptive parent shall be in conformance with renegotiated amount of federal Title IV-E adoption assistance.
(4) State-funded adoption assistance and federal Title IV-E adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.

Section 10. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 11. Notice of Change. (1) Cabinet staff shall provide notice of a reduction, discontinuance, or termination of adoption assistance payments:
(a) In accordance with 922 KAR 1:320, Section 6.
(b) An adoptive parent shall notify the cabinet of any changes in circumstances that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment as described in KRS 199.555(9) and Section 6 of this administrative regulation.

Section 12. State-funded Adoption Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance payments paid per case shall be limited by available funds for the state-funded adoption assistance program.

Section 13. Training Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance [ex-federal-Title-IV-E-adoptions-assistance] consistent with training offered to resource home parents as specified in 922 KAR 1:350.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008, at 9 a.m. in the Cafeteria Meeting Room, CHR Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 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 December 1, 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) 564-7673.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Justin Dearinger, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the guidelines for the state-funded adoption assistance program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to operate the program and fulfill the responsibilities of the Cabinet for Health and Family Services. The Cabinet is required by KRS 199.555 to establish and promulgate by administrative regulation criteria for the state-funded adoption assistance program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by implementing the state-funded adoption assistance program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-
trative regulation currently assists or will assist in the effective administration of the statute by implementing the state-funded adoption assistance program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to the existing regulation will remove the requirements for federal Title IV-E adoption assistance and leave only the requirements for state-funded adoption assistance. The requirements for federal Title IV-E adoption assistance will be placed in a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide the public with a clearer understanding of the specific requirements of state-funded and federal Title IV-E adoption assistance for children with special needs. The amendment to place state-funded and Title IV-E adoption assistance programs into two separate administrative regulations is a direct suggestion of the U.S. Department of Health and Human Services Administration for Children and Families.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by requiring the secretary to administer the programs by administrative regulation to qualify for the receipt of federal funds and to cooperate with federal agencies for the proper administration of the adoption assistance programs.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing a clearer understanding of the state-funded adoption assistance program's requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 595 children in the Commonwealth who are receiving state-funded adoption assistance payments.

(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: The 595 children receiving state-funded adoption assistance and their parents will not have to take any action to comply with this administrative regulation or amendment.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The 595 children receiving state-funded adoption assistance and their parents will not have to pay any additional costs as a result of complying with this administrative regulation or amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Distinctions between state-funded and federal Title IV-E adoption assistance programs will be made clearer through the programs' separation into two administrative regulations. Program benefits will remain unchanged for entities identified in question 3.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No new cost is associated with the cabinet's implementation of this amendment.
(b) On a continuing basis: No new cost is associated with the cabinet's implementation of this amendment.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used for the implementation of this administrative regulation.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees:
(a) TIERING: Is tiering applied? This administrative regulation is applied in a like manner statewide; thus, there is no tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.55(10)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.
(c) How much will it cost to administer this program for the first year? This administrative regulation will require no new costs.
(d) How much will it cost to administer this program for subsequent years? The administrative regulation will require no new costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+/-): Expenditures (+/-): Other Explanation:

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

922 KAR 1:100, Public agency adoptions.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.472 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.051(1) requires that the fiscal note analyze the fiscal impact of the administrative regulation and evaluate the necessity and conformity of the administrative regulation with state and federal laws and regulations. KRS 194A.051(1) requires that the administrative regulation be in accordance with state and federal laws and regulations.

Section 1. Definitions. (1) "Approved adoptive parent" means a family approved in accordance with:
(a) 922 KAR 1:310;
(b) 922 KAR 1:350; or
(c) Section 6 of this administrative regulation.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(2) "Foster family home" is defined by KRS 199.011(10) and 600(02026).
(3) "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located to determine the preparation and suitability of a proposed adoptive parent, including the home environment, to receive a child for the purpose of adoption.
(4) "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.
(5) "Pre-adptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.
(6) "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4(3) of this administrative regulation.
(7) "Prospective adoptive parent" means an individual who has applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent.
(8) "Qualified mental health professional" or "QMHP" is defined by KRS 600 090(47).
(9) "Qualified mental retardation professional" or "QMMP" is defined by KRS 2026 010(12).
(10) "Social service worker" is defined by KRS 600 090(56);
(a) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study;
(11) "Special Needs Adoption Program" or "SNAP" means a program for the recruitment of an adoptive family by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified within thirty (30) days following the termination of parental rights. In accordance with KRS Chapter 625: [Adoptive home study] means a study conducted by a social worker to document the preparation and training received by an approved adoptive family.
(12) "Administrative review" means an independent study or assessment by cabinet staff in which a recommendation may be made regarding the status of a case at least every (6) six months.
(13) "Cabinet" means Cabinet for Health and Family Services.
(14) "Concurrent planning" means the child may simultaneously plan for reunification of a child with the birth family and permanent removal of the child if the prognosis for reunification is poor.
(15) "Concurrent planning family" means a foster family specifically identified and approved by the cabinet to provide concurrent planning placement services.
(16) "Interstate Compact on the Placement of Children (ICPC)" means the legal framework pursuant to KRS 615 030 for the placement of a child out of state.
(17) "Preplacement conference" means a meeting conducted by cabinet staff for
(a) Provide an approved adoptive family with information regarding a child that has been referred to the family for adoptive placement;
(b) Assist the family in reaching a decision regarding acceptance of placement; and
(c) Determine the method of presenting the family to the child;
(18) "Special Needs Adoption Program (SNAP)" means recruitment of an adoptive family by cabinet staff for a child for whom an adoptive placement has not been identified within one (-1) month following termination of parental rights.
(19) "Statement of After Placement Services" means an agreement for after placement supervision for a child placed with an out-of-state family whose agency is a licensed private adoption agency.

Section 2. Preparation of the Child for Adoptive Placement.
(1) A child prepared for adoptive placement by cabinet shall receive informationregarding the:
(a) Relationship to the biological or legal(birth) parent;
(b) Entitlement to a parent;
(c) If applicable, relationship with the foster family home[Foster parent relationship];
(d) Reason [for which] the foster placement may not become the adoptive placement;
(e) Role of the social/family service worker and the child in the placement planning process;
(f) Meaning of adoption;
(g) Process of recruitment of a parent[family] and how the child may be involved;
(h) Impeding placement;
(i) Visitation process;
(j) Placement decision; and
(k) Cabinet staff responsible for the placement decision.
(2) Cabinet staff shall:
(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age;
(b) File with the circuit or family court in the county where the adoption was finalization the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.
(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan [adoption plan--include reunification with a sibling separated in foster care, planning for the reunion and good state of communication and increased visitation between siblings [shall occur before termination of parental rights].
(4)(a) If cabinet staff agree by consensus during a planning conference, a sibling may be separated from another sibling in adoption upon consideration of:
(a) If age appropriate, each sibling's understanding of the facts of the relationship, [his] feelings, wishes, and ideas regarding options for placement;
(b) The perception of the relationship of each child with the [father's mother's - or child's] placement professional's perceptions of each child's relationship with his(s) sibling;
and
(c) The recommendation of:
1. QMHP or
2. If applicable, a QMMP.
(5) A QMHP, QMMP, relative, social service worker, nonadoption [file parent] or another individual approved by cabinet staff, therapists and psychologists working with each child.
(6) A mental health counselor, birth relative, family service worker, nonadoption foster parent, or other appropriate person may assist with preparing the child for adoption.
(7) If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.
(8) If a prospective adoptive parent(6) A foster child may be placed in a home approved for adoption prior to termination of parental rights when the child's goal has been changed to adoption.
(9) If an approved family has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:
(a) Shall comply with the Swift adoption procedures in accordance with KRS 199.565 to meet and discuss recruitment of a prospective adoptive parent;
(b) May invite an individual specified in subsection (5) of this section to a meeting in which the child's permanency plan is discussed;
and
(c) Shall register the child with SNAP in accordance with Section 6 of this administrative regulation [within one (1) month after the child is freed for adoption, cabinet staff shall register a waiting child with SNAP for recruitment of an adoptive family].

Section 3. Selection of [the] Adoptive Family.
(1) [Emphasis for adoptive placement in the best interest of the child shall be to expedite the adoption placement];
(2) Priority consideration for an adoptive placement shall be given to [the]:
(a) [An existing] relative; or
(b) [The current foster family home];
(2) The process of recruiting a prospective adoptive parent begins if(3) A final decision to pursue relative or foster-adoptive
shall be made no later than five (5) days from the date:
(a) Parental rights of the child are terminated; or
(b) A relative has not made a commitment to adopt the child;
(c) The child's foster family home has not made a commitment to adopt through a statement of intent;
(d) Both biological or legal parents of the child are deceased, and designated cabinet staff have been granted custody through the court; or
(e) The child's pre-adoptive placement is disrupted.
(3) Prior to placement, cabinet staff shall consider the prospective adoptive parent's acceptance of the child's behavior and characteristics.
(4) Unless an exception has been approved as described in 922 KAR 1:350, Section 2(2), or by the completion of the DPP-112C, Adoption Placement Exception Request, the following requirements shall apply to a prospective adoptive parent:
(a) No more than five (5) children, including prospective adoptive parent's own children, shall live in the prospective adoptive parent's home;
(b) No more than two (2) children under age two (2), including the prospective adoptive parent's own children, shall live in the prospective adoptive parent's home.
(5) The cabinet shall:
(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and
(b) Inform the prospective adoptive parent of:
1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b) and c;
2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:
   a. Health, background, and placement history;
   b. Behavior, including behaviors in accordance with KRS 605.090(1)(b) and c;
   c. Personal characteristics [Termination of parental rights hearing;]
   d. If the existing relative or foster parent shall not be pursued as an adoptive placement, the cabinet shall pursue adoptive placement according to the needs of the child with:
      (a) A concurrent-planning family;
      (b) An adopted family;
   (5) Acceptance by an approved family of a referral for adoptive placement shall result in a pre-placement conference.

Section 4. Preparation of the Prospective Adoptive Parent (Potential Adoptive Resource). (1) The prospective adoptive family shall have completed preparation for placement of a child for whom the cabinet has received wardship pursuant to 922 KAR 4:350 and be approved as a family resource home.
(2) Cabinet staff shall conduct/schedule a preplacement conference for a child available(identified) for adoption with the child's:
(a) Foster parent;
(b) Prospective adoptive parent;
(c) If applicable, a QMHP or OMDFS therapist; and
(d) If applicable, social service worker from the cabinets central worker from the licensed private child-care or child-placing agency where the child is placed.
(2) During the pre-placement conference, cabinet staff shall:
(a) Discuss the information provided in accordance with Section 3(5)(b) of this administrative regulation with the approved adoptive parent;
(b) Assists the approved adoptive parent in reaching a decision regarding acceptance of placement;
(c) Determine the method of presenting the approved adoptive parent to the child; and
(d) Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement;
(3) During the preplacement conference, cabinet staff shall discuss with the prospective adoptive parent acceptance of the:
(a) Referral;
(b) Health, background, and placement history of the child; and
(c) Plan for visitation and placement.;
and the family’s agency has signed the Statement of After Placement Services.

(3) A prospective out-of-state adoptive family who cannot pay the expenses to attend a placement conference or visit a Kentucky child may have travel expenses paid by the cabinet.

(4) If the deputy compact administrator in both states provides written approval of the visit and both states sign the Interstate Compact Placement Request, a Kentucky child may travel to visit an out-of-state prospective adoptive family.

(5) Cabinet staff or another adult whom the child knows shall accompany a Kentucky child on an out-of-state visit to a prospective adoptive family upon approval from the secretary for the cabinet.

(6) The adoptive home study shall include:
(a) Documentation that no physical, mental, or emotional barrier to the parent’s ability to adopt exists;
(b) A written report on any physical or mental illness and documentation of subsequent counseling or treatment including diagnosis, prognosis, and the therapist’s recommendation regarding appropriateness for adoptive placement;
(c) If applicable, verification of marriage;
(d) If applicable, divorce or death verification of a previous spouse;
(e) A criminal record check;
(f) A child and spouse abuse check and copy of any investigations previously completed by any agency;
(g) Personal and financial references; and
(h) A statement documenting the family’s current status with any previous adoption or foster care agencies.

Section 7. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 8. Postplacement Service. (1) The goal of a postplacement service shall be to:
(a) Ensure the success of the placement; and
(b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through the finalization of the adoption (provide regular support and ensure child access to prospective adoptive family during the period prior to the legal adoption through finalization).

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:350.

Section 9. Closure of an Approved Adoptive Home. Unless an extension is approved by the commissioner, closure of an approved adoptive home shall occur in accordance with:
(1) 922 KAR 1:310; or
(2) 922 KAR 1:350.

Section 10. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320. [Until the adoption judgment has been granted by the circuit court, administrative review for a child placed in an adoptive home shall continue.]

Section 8. Alternative Placement. When Disruption Occurs. (1) An alternative placement shall be planned following disruption of an adoptive placement.

(2) The child may be placed temporarily with a family that has already-adopted a special needs child.

Section 9. Reconsideration of a Closed Adoptive Home. The family may reapply and receive approval for adoptive placement:
(1) If previously closed in good standing; or
(2) Following finalization of an adoption.

Section 10. Closure of Approved Adoptive Homes. (1) If an approved family does not receive a placement within three (3) years, the family shall be closed on the third anniversary of the approval date unless an indefinite extension is granted for a family waiting for a nonspecial needs child.

(2) If an approved adoptive home shall occur if:
(a) An approved adoptive parent is criminally convicted or pleads guilty to charges of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 520.020 to 520.060, 520.090, 520.064, or 521.300 to 521.376;
(b) An approved adoptive parent commits:
(i) A crime of abuse, neglect, or exploitation of a child pursuant to KRS 505.100, 505.110, or 505.120; or
(ii) Abuse, neglect, or exploitation of a child, pursuant to KRS 505.020(1), substanated by the cabinet-pursuant to 622 KAR 1:320; or
(c) Physical abuse or neglect of a spouse-pursuant to KRS 505.020 by the approved adoptive parent is substantiated by the cabinet-pursuant to 622 KAR 1:320.

(d) A Serious physical or mental illness develops to the extent that care of the child by an approved adoptive parent is impaired, or
(e) The adoptive parent is convicted of a Class A or Class B felony offense pursuant to KRS Chapter 510; and
(f) If closure is necessary for a family who has a child placed, but the adoption is not finalized, the child shall be removed from the home.

(3) If the deficiency that led to closure has been resolved, an adoptive family previously closed due to a deficiency may reapply for adoption as an adoptive family.

(4) Except for the referral of a sibling of a child previously placed with the adoptive family, the status of a non-foster adoptive family placed on the register of waiting families shall change to inactive and subsequent referrals for adoptive placement shall not be made until finalization has occurred.

Section 11. Confidentiality of Records. (1) A child’s records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as described by KRS 194A 060(1), 194A 060(3), 199 520, 199 525, 199 570, 199 572, 199 575, 620 050, 525 045, 625 108, and 922 KAR 1:310.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the determination not to adopt. [Pursuant to KRS 194A 060(4), no person having charge of an adoption record shall give to an individual:
(a) The name of a party appearing in the record; or
(b) A copy of the record except upon order of the court that granted the adoption.]

Section 12. Request for Information from Adoption Records. (1) Identifying information from the cabinet’s record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:
(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and
(b) Determine the parent’s desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adopting or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:
(a) Review the adoption record, and
(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adoptee seeks contact with the birth family, cabi-
net staff shall inform the adult adoptee of a birth relative’s interest.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet," edition 9/08; and
(b) "DP-1129, Adoption Placement Exception Request," edition 9/08.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621. Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICK R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008, at 9 a.m. in the Cafeteria Conference Room, First Floor, CHI Building, 275 East Main Street, Frankfort, Kentucky. Individually interested in attending this hearing shall notify this agency in writing by November 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 December 1, 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 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deangner, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures for public agency adoptions of children in the custody of the cabinet.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the process and requirements for public agency adoptions of children in the cabinet’s custody.
(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 criteria for the adoption of children in the custody of the cabinet.
(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 outlining the procedures for the public agency adoption of children in the custody of the cabinet in accordance with state statutes, national practice standards, and in consideration of the safety, permanency, and well-being of children available for adoption.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment provides a clearer outline of the adoption process from beginning to end, inclusive of a child’s engagement in the adoption process, adoption parent referral, referral to Swift and the Special Needs Adoption Program (SNAP), pre-adoption placement, and post-adoption services; permits open adoptions, a nationally recognized best practice in certain adoption proceedings; simplifies the process for inspection of adoption records; provides for discussion of detailed information about the child with the prospective adoptive parent prior to placement and caps the number of children who can be placed in the same home for adoption, to discourage adoption disruption or dissolution; removes provisions concerning adult adopted person searches for parental or other familial individuals, which will be incorporated into a new administrative regulation, 922 KAR 1.550, to be filed concurrently with this amendment which clarifies the out-of-state adoption process; adds applicable federal law citations and updates regulatory references concerning permanency services, prospective adoptive parent requirements, and post-adoption services; and makes technical corrections to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure greater clarity regarding the public adoption process, compliance with state and federal child welfare laws, including placement across jurisdictions; and congruency amongst departmental administrative regulations.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying requirements of a public agency adoption of children in the custody of the cabinet.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clarifying the procedures for public agency adoptions of children in the custody of the cabinet.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2008, there were 1,877 children in the cabinet’s custody, 887 children available for adoption, and 459 children identified on the Swift Adoption Report who were available for adoption but did not have an identified adoptive family.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) and prospective adoptive parents will not have to take any additional action 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): There will be no additional costs to the regulated entities or prospective adoptive parents 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):
(5) The amendment includes additional safeguards for children’s safety, permanency, and well-being:
(a) Initially: No new cost is associated with the cabinet’s implementation of this amendment.
(b) On a continuing basis: No new cost is associated with the cabinet’s implementation of this amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from Title IV-E, Title IV-B subpart 2, and state general funds are used for the implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or indirectly increase any fees.
(9) TIERING: Is tiering applied? This administrative regulation is applied in a like manner statewide; thus, there is no tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 184A.050(1), 199.472
VOLUME 35, NUMBER 5 - NOVEMBER 1, 2008


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629h, 670-679b, 1966, 1966b

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 this fiscal year. This administrative regulation will generate new revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate new revenues.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will require no new cost.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will require no new 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 Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:140. Foster care and adoption permanency services.


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. Pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Sections 620 to 679, KRS 194.477 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty-four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.182(1) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Abuse parent search" means cabinet initiated efforts to locate a biological or legal parent or a relative.

(2) "Cabinet" is defined by KRS 199.011(2), and 600.020(6) means the Cabinet for Health and Family Services.

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) (a) "Concurrent planning" means the cabinet [may] simultaneously plan[plan for];
(a) The return [reunification] of a child in the custody [under the custodial care] of the cabinet to the child's parent; and
(b) Another permanent plan [placement] for the child is in the event return to parent is not achieved within fifteen (15) of the last twenty-two (22) months, in accordance with 42 U.S.C. 671(a)(15)(b) [Permanent removal of the child if the preconditions for reunification are [are not] met].

(5) "Parent" is defined by 42 U.S.C. 675(2).

(6) (a) "Reasonable efforts" is defined at KRS 620.020(9).

(7) "Relative" means an individual related to a child by blood, marriage, or adoption to a child.

(8) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception [During each fiscal year], the maximum number of children who [may] receive foster care in excess of twenty-four (24) months shall be [to] 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return [reunify] the child to the child's parent [with his or her parent] have

(a) Have been unsuccessful; or
(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's parent's [home] if:

(a) If an emergency custody order has been obtained pursuant to KRS 620.060 or any other [a] temporary custody order has been obtained pursuant to KRS 620.090 or any other

(c) A court orders the removal pursuant to KRS 620.140(1)(d).

(3) Upon removal of a child from the child's [his] home:

(a) Placement shall be:

1. Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

2. Closest in proximity to the child's home, in accordance with KRS 199.601;

(b) A child placed with a relative shall be considered for the Kinship Care Program, as established in 922 KAR 1:130.

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:


(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
(b) Be conducted to gather as much information as possible related to the person and the person’s location which may include:
1. Date of birth;
2. Social Security number;
3. Present or previous employers; and
4. Present or most recent address; and
(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(6) If a relative placement is in the best interest of the child, the cabinet shall use an absent parent to locate a relative.

(7) Be conducted by cabinet staff to locate a parent whose whereabouts are unknown.

(6) If the case conference held in compliance with KRS 620.150(2)(a) in the custody of the court, the cabinet shall develop and document a case permanency plan, using Form DPP-1231. Family Case Plan.

(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(a) During development of the case plan, the permanency plan; and
(b) At the six (6) month case review, as documented on the P&L-4282, Family Case Plan. The plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

Section 4. Permanency Goals. (1) A permanency goal for a child in the custody of the cabinet shall be established according to the particular needs and best interests of the child.

(a) A permanency goal shall include one (1) of the following:
1. Return to parent;
2. Adoption;
3. Permanent relative placement;
4. Legal guardianship;
5. Another planned permanent living arrangement;
6. Emancipation.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child in the custody of the cabinet is returned to the parent if the cabinet determines:

(a) A family has made sufficient progress toward completing the case permanency plan; and
(b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not made sufficient progress toward achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:

(a) A child in the custody of the cabinet shall be returned to the parent if the cabinet determines:
1. The home is safe;
2. The reunification is in the best interest of the child;
3. Another permanency goal, as described in Section 4(2) of this administrative regulation, shall be adopted if:
4. A family does not make sufficient progress toward achieving the objectives specified in the Family Case Plan.
5. A change in the permanency goal;
6. Termination of parental rights or legal action.

(3) If the court determines that:

(a) A circumstance occurs or negates the requirement to make reasonable efforts to reunite the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
(b) The cabinet pursues involuntary termination of parental rights.

1. Pursuant to KRS 625.090; or
2. If the child has been in foster care for fifteen (15) of the most recent twenty-four (22) months pursuant to 42 U.S.C. 675.

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section. If [An exception for proceeding with involuntary termination of parental rights may be requested by the cabinet if:

(a) A relative placement has been secured;
(b) Termination is not in the best interest of the child, for a compelling reason:
1. Documented in the case permanency plan;[family case plan];
2. Monitored on a continuing basis; or
(c) A service necessary for return to reunification with the parent has not been provided within the time permitted specified in the case permanency plan.[Family Case Plan].

(3) Cabinet staff shall consider involuntary termination of parental rights at each [twelve (12)-month] permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanency Placement. The permanency goal for a child in the custody of the cabinet shall be permanent placement if:

(1) Return to the parent is not in the child’s best interest; and
(2) A relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child in the custody of the cabinet shall be legal guardianship if the cabinet determines that:

(a) Return to reunification with the parent or adoption is not in the child’s best interest;
(b) There is an identified adult willing to seek legal guardianship of the child; and
(c) Legal guardianship by the adult identified in subsection (1)(b) is in the child’s best interest.

(2) Legal guardianship by the adult identified in subsection (1)(b) is in the child’s best interest.

Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative and the child has been placed on a national adoption registry;
(b) Other permanency goal options have been exhausted[considered] and are no longer[appropriate] due to the specific circumstances of the child;
(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;
(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and
(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not [appropriate or viable] alternatives.

(2) Approval must be obtained from the commissioner or designee[commissioner or office of the Department for Community Based Services] prior to the establishment of another planned permanent living arrangement as a permanency goal for a child:

(a) Under the age of sixteen (16); or
(b) Placed with a private child caring agency.

Section 10. Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation if:

(a) The youth is age sixteen (16) or older and
(b) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.

(2) If emancipation is established as a permanency goal, the youth shall be referred to an independent living program adminis-
tered by the cabinet.

Section 11. Permanency Services. (1) The cabinet shall pro-
vide services for a child in the custody of the cabinet so that perma-

nency may be achieved.

(2) The permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the home; and
2. Ensure safe return of the child if the goal is return to the

parent.(reunification);
(b) Adoption assistance pursuant to 922 KAR 1:050 or 922
KAR 1:050.
(c) Postfinalization adoption assistance when adoption assis-
tance has not been previously approved pursuant to KRS 199.555
and 199.557.
(d) Postadoption placement stabilization services as described
in 922 KAR 1:530(2)

-1367-

1. A final termination is near dissolution due to the need for
extraordinary medical care;
2. The child was placed for adoption by the cabinet;
3. The adoptive parent has made a reasonable effort to meet
the needs of the child without assistance; and
4. The child is under the (18) years of age;
and
(e) Referral to other cabinet and community resources
necessary for the achievement of permanency or the child's

permamency goal.

Section 12. Incorporation by Reference. (1) 'DPF-1281, Family
Case Plan', edition 9/08, RPP-1282, Family Case Plan, edition
9/08, is incorporated by reference.

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

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall, if requested,
be held on November 21, 2008 at 9 a.m. in the Cafeteria Meeting
Room, First Floor, CHR Building, 275 East Main Street, Frankfort,
Kentucky. Individuals interested in attending this hearing shall
notify this agency in writing by November 14, 2008, five (5)
workdays prior to the hearing, of their intent to attend. If no notice
of intent to attend the hearing is received by that date, the hearing
may be canceled. The hearing is open to the public. Any person
who attends will be given an opportunity to comment on the
proposed administrative regulation. A transcript of the public hearing
will not be made unless a written request for a transcript is made. If
you do not wish to attend the public hearing, you may submit
written comments regarding this proposed administrative
regulation at least three business days after the public hearing.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This adminis-
trative regulation establishes the maximum number of children
required in foster care longer than twenty-four months, permanency
goals, and permanency services available to children in Cabinet

-1367-
from Title IV-E and state general funds are used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? This administrative regulation is applied in a like manner statewide; thus, there is no tiering.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 194A.050(1), 199.467, 620.180


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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


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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will require no new cost.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will require no new cost.

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

Revenues (+/-):
Expenditures (+/-):
GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
Office of the Commissioner
(New Administrative Regulation)

17 KAR 4:020. Indigent Veterans' Burial Program.

RELATES TO: KRS 40 355, 40.357
STATUTORY AUTHORITY: KRS 40.357(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
40.357(1) directs the Kentucky Department of Veterans Affairs
(KDVA) to promulgate administrative regulations to implement
the Indigent Veterans' Burial Program. This administrative regulation
establishes rules to operate this program, including oversight
by this department and required eligibility criteria applicable before
state funds may be used to defray funeral costs.

Section 1. Eligibility Criteria under KRS 40.355. To be eligible
for state funds to defray the costs of funeral expenses for burial in
any cemetery in Kentucky, private or public, the following require-
ments must be met:

1. The deceased shall be a veteran as defined in 38 U.S.C.
Service, Section 101, meaning "a person who served in the active
military, naval, or air service, and who was discharged or released
there from under conditions other than dishonorable," and as veri-
ified by discharge records; and who:
   (a) Died in Kentucky; and
   (b) Was indigent at the time of death meaning:
      1. The deceased's estate possessed no money or other assets
to pay for or defray the costs of the deceased's funeral, and
      2. There was no other person obligated by law to pay for the
funeral expenses of the deceased; and
   3. After diligent efforts, no funeral home, cemetery, veteran
service organization, or any entity was able to obtain funds to pay
funeral expenses from any other private or public source;
   (2) Priority shall be given to indigent veterans whose records
indicate that they had established Kentucky residency prior to
death so that General Funds expended to defray funeral costs
shall be used for the citizens of Kentucky first; and
   (3) The following records may be used to establish state resi-
dency: military service records such as a DD Form 214, the
deceased's driver's license, any other official records clearly showing
the deceased was a Kentucky resident.

Section 2. Reimbursement. The amount of reimbursement
authorized is limited as follows:
   (1) Except as provided by subsection (2) of this section, the
department shall reimburse a cemetery or funeral home its costs
for burying an indigent veteran.
   (2) The maximum amount reimbursed shall not exceed $1000
per indigent veteran.

Section 3. Application Process. (1) To request state funds to
defray the funeral costs of an eligible indigent veteran, each funeral
home, cemetery, veterans service organization, private citizen, or
other entity shall submit an Indigent Veteran Burial Application,
designated as KDVA Form 6, incorporated by reference in Section
4 of this administrative regulation.
   (2) State and federal veterans cemetery priority. Each funeral
home, cemetery, veteran service organization, or any entity seek-
ing defrayment of burial costs shall use due diligence in seeking
burial of the Indigent veteran in a state or federal veterans ceme-
tery before considering burial in any other cemetery.

Section 4. Approval Process. The final decision to approve an
Indigent Veteran Burial Application shall be made by the Commissio-
nor, Kentucky Department of Veterans Affairs. The Commissioner may
delegate the approval authority to the Deputy Commissioner or to
the staff assistant in charge of Kentucky Veterans Cemeteries. The
approval authority shall decide whether the deceased meets the eligi-
""
burial sites to save money and to ensure traditional military honors are conferred upon the deceased indigent veteran.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For any applicant to receive defrayment of burial costs, KDSA Form 6 (application) must be submitted and approved.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The net result is to save applicants money by sending them an approved amount, up to one thousand dollars per indigent veteran burial.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As indicated in (b) immediately above, the applicants will save money.
   (d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Legislature, in enacting KRS 40.355 and 40.357, appropriated $12,500 to operate the first year of the Program, and $37,500 for the second year.
   (e) Initially: $12,500 for the initial year as appropriated.
   (f) On a continuing basis: An estimated $37,500 for each year thereafter. This is only an estimate and can be more or less depending on two factors. Factor one is the number of indigent applications filed in any given year. It will take a few years of running the program to identify any useful trends. Factor two is the funding source. KRS 40.355 authorizes state and federal funding of the Program, as well as gifts, grants, and "any other funds both public and private." As with the first factor, it will take time to see how these funding sources will actually materialize.
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Kentucky Department of Veterans Affairs budget, with appropriated funds for the first two years from the Legislature.
   (7) Provide an assessment of whether an 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 anticipated. See response to Question 5c above.
   (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees increased.
   (9) TIERING: Is tiering applied? Tiering does not apply as this regulation is uniformly applied to all regulated entities.

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 potentially impacts local entities, such as city and county governments, coroners' offices, etc., in providing a funding source to defray the costs of pauper burial, specifically the burial of indigent veterans.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The state regulations that require or authorize action taken by the administrative regulation are KRS 40.355 and 40.357.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenues anticipated. For any state or local government agency acting as an applicant to this Program, a potential burden cost savings may be realized up to a maximum of one thousand dollars per indigent burial.
   (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 stated immediately above, up to one thousand dollars per indigent veteran in burial costs otherwise paid by the state or local entity acting as applicant to the Program.
   (b) How much will cost to administer this program for the first year? Estimated to be the amount appropriated by the Legislature, or $12,500 for year one.
   (c) How much will it cost to administer this program for subsequent years? Estimated to be the amount appropriated by the Legislature, or $37,500 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 (+/-): None
Expenditures (+/-): No additional expenditures.
Other Explanation: None

GENERAL GOVERNMENT CABINET
Kentucky Board of Speech-Language Pathology
and Audiology
(New Administrative Regulation)

201 KAR 17:014. Temporary licenses for speech-language pathologist, speech-language pathology assistant, and audiologist.

RELATES TO: KRS 334A.033, 334A.050, 334A.181, 334A.183, 334A.185, and 201 KAR 17:012.
STATUTORY AUTHORITY: KRS 13A.100, 334A 010, NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.181 authorizes the board to provide temporary licenses by promulgating administrative regulations. This administrative regulation provides requirements for the issuance of temporary licenses.

Section 1. Definition. "Board Administrator" means the Director of the Division of Occupations and Professions.

Section 2. Requirements. (1) Upon receipt of application showing that applicant meets the requirements set forth in KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17:012, the Board Administrator shall issue a temporary license to the applicant, by sending a letter to the applicant on Board letterhead.
   (2) The temporary license shall entitle the applicant to practice as a speech-language pathologist, speech-language pathology assistant, or audiologist until the applicant is reviewed by the Kentucky Board of Speech Language Pathology and Audiology. A temporary license shall not be effective for more than 180 days as provided by KRS 334A.181(3).

Section 3. Unprofessional Conduct. If the application shows evidence of unprofessional conduct per KRS 334A.180(1) or (4), person shall not be granted temporary licensure, and the application shall be held pending review by the board.

This is to certify that the Chair of the Kentucky Board of Speech-Language Pathology and Audiology 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.

PAMELA ADAMS ISON, Chair
APPROVED BY AGENCY: October 15, 2008
FILED WITH LRC: October 15, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

November 25, 2008, at 3 p.m., local time, at the Kentucky Board of Speech Language Pathology and Audiology, 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 December 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: Gerald W. Hoppmann, Director, Kentucky Board of Speech Language Pathology and Audiology, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 566-1899.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a process for issuing temporary licenses per KRS 334A.181.
(b) The necessity of this administrative regulation: The necessity of this regulation is to provide guidance to applicants who wish to request temporary licensure, as well as to provide guidance to the Division of Occupations and Professions when processing applications.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to promulgate regulations per KRS 13A.100 and 334A.010.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the board to temporarily grant licensure between board meetings.

(2) If 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: Currently there are approximately 300 applicants for speech-language pathologist; 36 for speech-language pathology assistant; and 25 for audiologist annually; and approximately 2,500 license holders (of all types) 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 licensure will have to comply with KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17.012.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Each licensed speech-language pathologist, speech-language pathology assistant, and audiologist shall pay a renewal fee of $150 biennially.
(c) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice temporarily until formal board review.
(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 license 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 amended administrative regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not increase existing fees, nor does it implement new fees.
(f) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license 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 licensure as a speech-language pathologist, speech-language pathology assistant, and audiologist, and thus are governed by the Kentucky Board of Speech Language Pathology and Audiology.
3. Identify each state or federal statute or federal regulation that requires, authorizes or regulates the action taken by the administrative regulation. KRS 334A.033, 334A.050, 334A.181, 334A.183, 334A.185, and 201 KAR 17.012.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not generate additional revenue, as applicants who are granted temporary licensure are simply those who have applied for initial licensure and are awaiting board approval.
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? See answer above.
6. 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 moneys are appropriated.
7. 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 moneys 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:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Repealer)


RELATES TO: KRS 224.10-100, 40 C.F.R. 60.40a-49a

- 1371 -
STATUTORY AUTHORITY: KRS 224.10-100(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-
100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2009-507 and 2009-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation repeals an unnecessary administrative regulation.

Section 1. 401 KAR 59:016, New electric utility steam generating units, is hereby repealed.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 10, 2008
FILED WITH LRC: October 13, 2008 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held No-

vember 21, 2008, at 10 a.m. (local time) in the Conference Room of the Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Ken-
tucky. Individuals interested in being heard at this hearing shall notify the agency 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 do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 1, 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Ken-
tucky 40601, phone (502) 564-3599, fax (502) 564-4666, e-mail millie.ellis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis, Environmental Technologist III

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrati-
ve regulation repeals a redundant administrative regulation.
(b) The necessity of this administrative regulation: This adminis-
trative regulation repeals an administrative regulation that is no
longer necessary.
(c) How this administrative regulation conforms to the content of the authorizing statutes: All the provisions of the federal New Source Performance Standard (NSPS), 40 C.F.R. Part 60, Subpart D, have currently been adopted in 401 KAR 60:005.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The adminis-
trative regulation repeals an administrative regulation that is no
longer necessary or applicable.

(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the author-
zizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation. New electric utility steam generating units that commenced on or after September 19, 1978 are subject to 401 KAR 59:016, which contains the provisions of the federal New Source Performance Standard (NSPS) of 40 C.F.R. Part 60, Subpart Da. This NSPS has been adopted in 401 KAR 60:005; there-

fore, 401 KAR 59:016 is unnecessary and redundant.

(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 amend-
ment, including:
(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: There are no new requirements associated with the repeal of 401 KAR 59:016.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3)? There are no new costs associated with the repeal of 401 KAR 59:016.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Confusion concerning the applic-
ability or 401 KAR 59:016 will be resolved.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs associated with the repeal of this administrative regulation.
(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No new revenue is required to implement this administrative regula-
tion.
(7) Provide an assessment of whether an 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 estab-
lishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a
local government, including any service provided by that local government? No
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known unit, part, or division of state or local government will be affected by the repe-
al of this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regula-
tion. The repeal of this administrative regulation does not relate to any known aspect or service of state or local government.
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 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? The repeal of this administrative regulation will generate no new revenue.
(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? The repeal of this administrative regulation will generate no new reve-

ue.

(c) How much will it cost to administer this program for the first year? No costs to administer the program are associated with the repeal of this administrative regulation.
(d) How much will it cost to administer this program for subse-
quent years? No continuing costs to administer the program are associated with the repeal of this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Securities
(New Administrative Regulation)

808 KAR 10:042 Use of senior certifications and designations.

RELATES TO: KRS 292.320(1)(c), 292.320(2)(b),
292.330(13)(a)7, 292.470, 292.530(1)(a)

STATUTORY AUTHORITY: KRS 292.330(12)(b), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.320
prohibits fraud or deception in connection with the offer, sale, or
purchase of a security or the provision of investment advice. KRS
292.330(13)(a)7 authorizes the commissioner to take legal action
against an applicant or registrant if the person has engaged in
dishonest or unethical practices in the securities business. This
administrative regulation sets forth practices that are fraudulent or
deceptive within the meaning of KRS 292.320 or dishonest and
unethical within the meaning of KRS 292.330(13)(a)7.

Section 1. Misleading Use of Certification of Designation is
Prohibited. As set forth in Section 2 of this administrative regula-
tion, the use of a senior specific certification or designation that
indicates or implies that the user has special certification or training
in advising or servicing senior citizens or retirees shall be a fraudu-
 lent, deceptive, dishonest, or unethical practice in the securities
business within the meaning of KRS 292.320(1)(c), 292.320(2)(b),
or 292.330(13)(a)7, if used by any person in connection with:

(1) The offer, sale, or purchase of securities; or
(2) The provision of advice:

(a) As to the value of or the advisability of investing in, pur-
chasing, or selling securities, either directly or indirectly or through
publications or writings;
or
(b) By issuing or promulgating analyses or reports relating to
securities.

Section 2. Prohibited Uses of a Certification or Designation.
The prohibited use of a senior specific certification or professional
designation in the securities business shall include the following:

(1) Use of a certification or professional designation by a per-
son who has not actually earned or is otherwise ineligible to use
such certification or designation;
(2) Use of a nonexistent or self-conferred certification or pro-
fessional designation;
(3) Use of a certification or professional designation that indi-
cates or implies a level of occupational qualifications obtained
through education, training, or experience that the person using the
certification or professional designation does not have; and
(4) Use of a certification or professional designation that was
obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales
or marketing;
(b) Does not have reasonable standards or procedures for
assuring the competency of its designees or certificants;
(c) Does not have reasonable standards or procedures for
monitoring and disciplining its designees or certificants for im-
proper or unethical conduct; or
(d) Does not have reasonable continuing education require-
ments for its designees or certificants in order to maintain the de-
signation or certificate.

Section 3. Reputable Presumption for Certifications or Design-
ations Issued by Accredited Organizations. Solely for purposes of
Section 2(4) of this administrative regulation, there is a reputa-
table presumption that a designating or certifying organization is not
disqualified if the organization has been accredited by:

(1) The American National Standards Institute;
(2) The National Commission for Certifying Agencies; or
(3) An organization that is on the United States Department of
Education's list entitled "Accrediting Agencies Recognized for Title
IV Purposes" and the designation or credential issued from that
organization does not primarily apply to sales or marketing.

Section 4. Certifications and Designations Indicating Special
Training. In determining whether a combination of words, or an
acronym standing for a combination of words, constitutes a certifi-
cation or professional designation indicating or implying that a
person has special certification or training in advising or servicing
senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior", "retirement",
"elder", or like words, combined with one or more words such as
"certified", "registered", "licensed", "adviser", "specialist", "consult-
ant", "planner", or like words, in the name of the certification or
professional designation; and
(2) The manner in which those words are combined.

Section 5. Reputable Presumption for Certain Job Titles. (1) "Financial Services Regulatory Agency" means an agency that
regulates broker-dealers, investment advisers, or investment com-
panies as defined under the Investment Company Act of 1940.
(2) For purposes of this administrative regulation, there is a
reputable presumption that a certification or professional designa-
tion does not include a job title within an organization that is li-
censed or registered by a state or federal financial services regula-
tory agency, if that job title:

(a) Indicates senility or standing within the organization; or
(b) Specifies an individual's area of specialization within the
organization.

Section 6. Nothing in this administrative regulation shall limit
the commissioner's authority to enforce existing provisions of law.

ROBERT VANCE, Secretary
CHARLES VICE, Commissioner
APPROVED BY AGENCY: September 10, 2008
FILED WITH LRC: October 9, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
November 21, 2008, at 10 a.m., EDT, at the Department of
Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort,
Kentucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by November 14, 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 not be canceled. The hearing is open to the public. Any person
who wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. A transcript of the public
hearing will not be made unless a written request for a transcript is
made. If you do not wish to be heard at the public hearing, you
can submit written comments on the proposed administrative
regulation. Written comments shall be accepted until December 1,
2008. Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation by the above date to the contact person:

CONTACT PERSON: Colleen Keefe, Counsel, Department of
Financial Institutions, 1025 Capital Center Drive, Suite
200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 234,
fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Colleen Keefe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This adminis-
trative regulation is based on a national model rule and clarifies spe-
cific conduct that is a fraudulent, deceptive, dishonest, or unethical
practice in the securities business;
(b) The necessity of this administrative regulation: This admin-
istrative regulation clarifies the type of conduct that is subject to
legal action by the commissioner of the department;
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The Act prohibits fraudulent and deceptive conduct and authorizes the commissioner to take legal action against those who engage in dishonest or unethical practices in the securities business.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clarity to those engaging in the securities business.

(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.

(b) The necessity of the amendment to this regulation.

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

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

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person who uses a senior specific certification or designation in connection with the offer, sale, or purchase of a security or the provision of investment advice.

(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 comply with this administrative regulation or amendment: No new action is required. Existing law prohibits fraudulent conduct and this regulation clarifies that certain conduct is considered fraudulent.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will know with greater certainty what conduct is prohibited and may result in legal action by the commissioner.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration of KRS Chapter 292 is funded by fees from the securities industry.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The regulation applies equally to all persons engaging in conduct covered by the regulation because all such deceptive conduct should be equally prohibited.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Securities of the Department of Financial Institutions will investigate alleged violations of this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.330(12)(f) and 292.500(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. There will be no effect on expenditures or revenue for the first full year.

(8) 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 are anticipated.

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

**PUBLIC PROTECTION CABINET**

Department of Financial Institutions

Division of Securities

(NEW ADMINISTRATIVE REGULATION)

808 KAR 10:460. Request for Approval of Change in Control.

RELATES TO: KRS 292.330(12)(f); 292.330(13)(a)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.330(12)(f) authorizes the commissioner to prescribe rules for the conduct of business by broker-dealers and Investment advisers. KRS 292.330(13)(a) authorizes the commissioner to deny, suspend or revoke the registration of a broker-dealer or Investment adviser if the registrant or any person, directly or indirectly controlling the registrant has engaged in certain activities. This administrative regulation requires registrants to submit a request for a change in the control of the registrant so that the commissioner may review the background of the acquiring person.

Section 1. Definitions. (1) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(2) "Reportable event" means an event that is required to be reported in Items 11A-11H of the Form BD or Item 11 of the Form ADV.

Section 2. Presumption of Control. A person is presumed to control an entity if the person:

(1) Is an officer, director, general partner, or managing member of the entity or is a person occupying a similar status or performing similar functions;

(2) Has the right, directly or indirectly, to vote twenty-five (25) percent or more of the voting securities of the entity; or

(3) Is entitled to receive twenty-five (25) percent or more of its profits.

Section 3. Requirement for Approval of Change in Control. A registered broker-dealer or Investment adviser shall submit a request for approval of a change in the control of the broker-dealer or Investment adviser if control is to be acquired by any person who:

(1) Is not currently registered in Kentucky as a broker-dealer or Investment adviser; or

(2) Has had a reportable event in the previous ten (10) years.

Section 4. Request for Approval of Change in Control. (1) A registered broker-dealer or Investment adviser required to submit a request for approval of a change in control shall file a letter of request along with an amended Form BD or Form ADV indicating the proposed change in the control of the broker-dealer or Investment adviser.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

(2) A request for approval shall be submitted at least thirty (30) days prior to the proposed change in control.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Form BD", issued May, 2002.
(b) "Form ADV", Issued April 7, 2006.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

ROBERT VANCE, Secretary
CHARLES VICE, Commissioner
APPROVED BY AGENCY: September 10, 2008
FILED WITH LRC: October 9, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2008, at 10 a.m. EDT, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 1, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Colleen Keefe, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 234, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Colleen Keefe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires a registered broker-dealer or investment adviser to request approval of a change in the control of the broker-dealer or investment adviser if the acquirer is not registered or has a disciplinary history.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the Department to deny a change in the control of a registered broker-dealer or investment adviser if the acquirer is the subject of a legal or regulatory action.
(c) How this administrative regulation conforms to the terms of the authorizing statutes: KRS 292.330(13)(a) currently allows the commissioner to deny an application or suspend, revoke, restrict or limit the registration of a broker-dealer or investment based on various factors including the activities of persons who control the firm.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides an alternative to actions permitted by 292.330(13)(a) and lessens or avoids any negative impact on the customers of the registered firm that would otherwise occur with those actions.
(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:
(b) The necessity of the amendment to this regulation:
(c) How the amendment conforms to the content of the authorizing statute:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,700 broker-dealers and 120 investment advisers that are registered 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 comply with this administrative regulation or amendment. Currently, registrants must either submit a new application or amend an existing application when there is a change in control. This regulation will require them to submit a separate request for approval of a change in control.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little cost to comply with this regulation because registrants already have to submit similar requests to other securities regulators.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities may avoid becoming subject to revocation or other proceedings against their registration by first obtaining approval for changes in control.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: Minimal
(b) On a continuing basis: Minimal
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration of KRS Chapter 292 is funded by fees from the securities industry.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change in control: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or increase, directly or indirectly, any fees.
(9) TIERING: Is tiering applied: Tiering is not applied. The purpose of the regulation is to allow the Department to review the background of persons who control registered broker-dealer firms regardless of the type or size of the firm. This review is necessary for all firms that are registered with the Department to transact business in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Securities of the Department of Financial Institutions will review requests for approval of change in control
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.330(12)(f) and 292.330(13)(a)
4. Estimate the effect of the administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: There will be no effect on expenditures or revenue for the first full year.
(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 are anticipated.
(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated.
-1375-
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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


RELATES TO: KRS Chapter 159 471, 159.472
STATUTORY AUTHORITY: KRS 194A.050, 194.472
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to establish administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 194.472 authorizes the cabinet to establish guidelines for the placement of children for adoption by the Cabinet for Health and Family Services. This repealed regulation is obsolete and is not reflective of current policy and practices of the Department for Community Based Services. The sections listing the requirements to be an approved or not approved adoptive parent shall be incorporated into 922 KAR 1:100.

Section 1. 922 KAR 1:030, Selection and approval of adoptive parents, is hereby repealed.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2008, at 9 a.m. in the Cafeteria Meeting Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending the hearing shall notify this agency in writing by November 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 December 1, 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-W-B, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deeranger, DCBS Regulation Coordinator

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 1:030, Selection and approval of adoptive parents.
(b) The necessity of this administrative regulation: 922 KAR 1:030 is being repealed, because the administrative regulation is obsolete and not reflective of current policy and practices of the Department for Community Based Services. Provisions of 922 KAR 1:030 with any remaining application will be incorporated into the concurrent amendment of 922 KAR 1:100, Public agency adoption
(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(2) If 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 not an amendment.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(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 only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(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 the repeal of 922 KAR 1:030, Selection and approval of adoptive parents.
(b) On a continuing basis: There is no cost associated with the repeal of 922 KAR 1:030, Selection and approval of adoptive parents.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding associated with the repeal of 922 KAR 1:030, Selection and approval of adoptive parents.
(7) Provide an assessment of whether an 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 only purpose of this administrative regulation is to repeal 922 KAR 1:030, Selection and approval of adoptive parents.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with the repeal of 922 KAR 1:030, Selection and approval of adoptive parents.
(9) TIERING: Is tiering applied? There is no tiering associated with the repeal of 922 KAR 1:030, Selection and approval of adoptive parents.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Justin Deeranger, DCBS Regulation Coordinator

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and its organizational unit, the Da-
Section 2. Adoption Assistance Eligibility Criteria. (1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:
(a) The child is available for adoption in accordance with:
1. KRS 199.500(1);
2. KRS 199.502; or
3. KRS Chapter 625;
(b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and
(c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.
(2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child an exception to subsection (1)(c) of this section shall be made.
(3) A special needs child shall:
(a) Meet the eligibility criteria established in 42 U.S.C. 673 at the time the adoption proceedings are initiated including:
1. Eligibility for Aid to Families with Dependent Children as the program was effective on July 16, 1996, at the time the child was removed from the home of a relative;
2. Eligible for Supplemental Security Income; or
3. Status as a child:
   (a) Born to a minor parent who is receiving Title IV-E foster care maintenance;
   (b) Who has received Title IV-E foster care maintenance; and
   (c) Not have a parent with custody or legal claim to the child.
   (b) The child has an adoption assistance agreement that is entered in accordance with Section 7 of this administrative regulation, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances at the time of the child's original adoption.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:
(1) 922 KAR 1:350; or
(2) 922 KAR 1:310.

Section 4. Adoption Placement Agreement. (1) Prior to placing a child with a prospective adoptive parent, the prospective adoptive parent and a cabinet representative shall review and sign the adoption placement agreement.
(2) The adoption placement agreement shall advise the prospective adoptive parent of:
(a) Special needs of the child;
(b) Cabinet's expectations; and
(c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. (1) At the time of or prior to finalization of the adoption, an adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement which shall:
(a) Be in effect in accordance with 42 U.S.C. 673(3) and 45 C.F.R. 1356.40(b);
(b) Determine the nature and amount of the adoption subsidy; and
(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.
(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.
(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(i)(I), the requirement of Section 4(1) of this administrative regulation shall be waived.
(4) An adoption assistance payment shall begin on the date that the adoption assistance agreement is signed by the adoptive parent.
VOLUME 35, NUMBER 5 – NOVEMBER 1, 2008

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 14, 2008

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 14, 2008 at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Dick Roeding called the meeting to order, the roll call was taken. The minutes of the September 9, 2008 meeting were approved.

Present were:
- Members: Senators Dick Roeding, Aloe Forgy Kerr, Joey Pendleton, and Gary Tapp; and Representatives Robert Damron, Danny Ford, and Ron Weston.
- LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenenner, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Nagler.
- Guests: Ancil Harbin, Department of Veterans’ Affairs; Kathryn Gabhart, Kentucky State Board of Elections; Ricky Haven, Angela Robinson, Don Speer, Finance and Administration Cabinet; Dick Carroll, Board of Accountancy; Jane Gardner, Billy Van Pelt, State Board of Examiners and Registration of Landscape Architects; Rayn Halloran, Gerald Hoppman, Geoff Wilson, Kentucky Board of Certification of Alcohol and Drug Counselors; Charles O’Neal, Tim Pickering, Lee Rowland, Kentucky Board of Emergency Medical Services; Ryan Oster, Jeff Ross, Catherine York, Department of Fish and Wildlife Services; Donna Duncan, Janey Coe-Geeslin, Catherine Stahl, Kentucky Economic Development Finance Authority; Josie Bocker, Barry Elmore, Abby Powell, Division of Water; Lora Gowins, Ty Martin, Division for Air Quality; Bamey Kinman, Steve Lynn, Greg Muravchik, Justice and Public Safety Cabinet; Paula Hampton, Carol Hughes, Lucretia Johnson, Dwight Lovan, Carla Montgomery, Department of Workers’ Claims; Brenda Parker, Malea Rivera, John Burkholder, Department of Insurance; Edgar Adams, Stephanie Bramer-Bames, Michael Burleson, Richard Dart, Danna Droz, Brian Finger, Stephanie Hold, David Hopkins, Van Ingram, Sharon Eli Mercer, Jeff Osman, Elizabeth Partin, Sadie Reynolds, Michael Rodman, Dave Salangs, Stan Salays, Richard Sloane, Matt Thompson, Gary Vorsanger, Office of Inspector General.

The Administrative Regulation Review Subcommittee met on Tuesday, October 14, 2008, and submits this report:

The Subcommittee determined that the following administrative regulation did not comply with statutory requirements and was deficient:

State Board of Examiners and Registration of Landscape Architects: Board

201 KAR 3:050. Fees. Jane Gardner, executive director, and Billy Van Pelt, board president, represented the board.

In response to a question by Co-Chair Roeding, Ms. Gardner stated that the fees had not changed since 1999 and that the board had been subsidizing fees. She also stated that the fees solely covered the costs of processing applications and examinations.

In response to a question by Co-Chair Damron, Ms. Gardner stated that the board's funding for 2008 was not redirected by the executive branch budget, but that the budget recommended redirection of the board’s funding for 2009.

In response to a question by Co-Chair Roeding, Ms. Gardner stated that the board preferred to move ahead with this administrative regulation rather than to delay.

In response to a question by Representative Ford, Ms. Gardner stated that, pursuant to the statute, an inactive licensee may use the title, Landscape Architect, but shall not practice. Thus, the board determined it was more valuable than its current twenty-five (25) dollar fee indicated.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend 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.

Senator Tapp made a motion, seconded by Representative Ford, to find 201 KAR 10:050 deficient. On a roll call vote, the administrative regulation was found deficient, with Co-Chair Roeding, Co-Chair Damron, Senator Pendleton, Senator Tapp, Representative Ford, and Representative Weston voting in favor of the finding of deficiency and Senator Kerr voting in opposition to the finding.

Administrative Regulations Reviewed by the Subcommittee:

DEPARTMENT FOR VETERANS’ AFFAIRS: State Veterans’ Nursing Homes

17 KAR 3:020. Maximum charge for room and care at state veterans’ nursing homes. Ancil Harbin, branch manager, represented the department.

KENTUCKY STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:140 & E. Submitting a federal post card application and absentee ballot request electronically. Kathryn Gabhart, general counsel, represented the board.

In response to questions by Co-Chair Roeding, Ms. Gabhart stated that this administrative regulation affected military personnel and overseas citizens and that the process involved the Internet and secure ballots, which made the process quicker.

In response to questions by Co-Chair Damron, Ms. Gabhart stated that an eligible voter may both register and vote through this process if done by the deadline. She also stated that the signature on the registration was to be compared with the signature on the ballot, but that states were not yet able to compare databases to audit for voters registered and voting in multiple states. Ms. Gabhart stated that the board was a proponent of and working toward Kentucky participation in a national database to audit for voting in multiple states, but that the capability was still several years from actualization.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 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.

FINANCE AND ADMINISTRATION CABINET: Purchasing

200 KAR 5.390 & E. Registration to collect Kentucky sales and use tax. Ricky Haven, Director of the Division of Sales and Use Tax, and Don Speer, executive director, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 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.

GENERAL GOVERNMENT CABINET: Board of Accountancy: Board

201 KAR 1:160. Peer reviews. Dick Carroll, executive director, represented the board.

In response to a question by Co-Chair Roeding, Mr. Carroll stated that peer reviews were always conducted in accountancy. Previously, this administrative regulation required that information be submitted regarding the peer reviews, but under this change, the board would receive the actual reports from the peer review organizations.

A motion was made and seconded to approve the following amendments: 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.

201 KAR 1:171. Repeal of 201 KAR 1:170.
Kentucky Board of Certification of Alcohol and Drug Counselors: Board

201 KAR 35.080. Voluntary inactive status. Ryan Halloran, assistant attorney general; Gerald W. Hoppmann, Director of the Division of Occupations and Professions; and Geoff Wilson, certified alcohol and drug counselor, represented the board.

In response to a question by Senator Tapp, Mr. Wilson stated that to return to full certification after a period of inactive status, the certificate holder shall have complied with continuing education requirements and filed an application for a status transfer with the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Board of Emergency Medical Services: Board

202 KAR 7:330 & E. Requirements for examination, certification, and recertification of the advanced emergency medical technician. Charles O'Neal, executive director, and Lee Rowland, deputy general counsel, represented the board.

In response to a question by Senator Tapp, Mr. O'Neal stated that the board was working to achieve national levels of EMT, including advanced levels that could begin IVs, perform airway techniques, and administer some medications.

In response to a question by Co-Chair Roeding, Mr. O'Neal stated that this administrative regulation did not provide incentives for licensure; however, the board had established two (2) pilot projects to that end in Jessamine and Bullitt Counties.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "advanced emergency medical technician"; (2) to amend Sections 5 and 7 to delete duplicative language; (3) to amend material incorporated by reference to reflect current forms; and (4) to amend the RELATES TO; STATUTORY AUTHORITY; NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7.510. Air ambulance services.

In response to a question by Co-Chair Roeding, Mr. O'Neal stated that the board had worked with industry representatives and responded to a request regarding the administrative regulations.

In response to a question by Representative Ford, Mr. O'Neal stated that the board usually addressed less than fifty (50) deficiencies annually for approximately 248 licensees.

In response to a question by Senator Tapp, Mr. O'Neal stated that the requirement for air conditioners on air ambulances had been deleted and that now the administrative regulation required air ambulances to be climate controlled.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to require air ambulances to be climate controlled and to keep pharmaceuticals within their recommended temperature ranges; (2) to amend material incorporated by reference to reflect current forms; and (3) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 4, 5, 6, 7, 9, 10, 11, and 16 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 13:01. Recreational fishing limits. Ryan Oster, program coordinator; Jeff Ross, program manager; and Catherine York, deputy general counsel, represented the department.

In response to a question by Co-Chair Roeding, Mr. Ross stated that this administrative regulation did not have an impact on commercial fishermen.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR ECONOMIC DEVELOPMENT: Kentucky Economic Development Finance Authority: Authority

307 KAR 1.050 & E. Application process for tax increment financing. Catherine Staub, assistant general counsel, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, and (3) to amend Sections 1, 2, and 4 to 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Water Quality

401 KAR 5.057. KDPS pretreatment requirements. Jory Becker, branch manager, and Barry Elmore, engineer, represented the division.

In response to a question by Senator Tapp, Mr. Becker stated that the division had received general and preliminary comments from stakeholders, but that the division had received one (1) general comment from the Kentucky League of Cities. Mr. Becker also stated that the division had clarified the matter of concern with the Kentucky League of Cities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with Executive Orders 2006-507 and 2006-531; and (3) to make technical corrections to Sections 1, 3 through 10, and 12 through 16. Without objection, and with agreement of the agency, the amendments were approved.

Division for Air Quality: General Administrative Procedures

401 KAR 50.066. Conformity of transportation plans, programs, and projects. Lora Gowins, environmental control supervisor, and Ty Martin, environmental technologist, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with Executive Orders 2009-507 and 2009-531; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary: Special Local Peace Officers

500 KAR 3.010. Definitions. Barry Kinman, executive staff advisor, Steve Lynn, assistant general counsel; and Gregg Muravchick, Executive Director of the Office of Investigations, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

500 KAR 3.020. Filing and processing SLPO commissions.

In response to questions by Co-Chair Damron, Mr. Lynn stated that the agency did not receive any public comments. Mr. Lynn also stated that LEOSA only applied to retired government officials, but that an officer affected by these administrative regulations may carry a concealed weapon until the officer was off duty. The officer may also carry a concealed weapon during off-duty hours if the officer had a CCW.
In response to a question by Co-Chair Roeding, Mr. Lynn stated that a special local peace officer had the same authority as a police officer while on the job site's property or while in chase from that property.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 through 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 3 to change the term of the commission for a special local peace officer from five (5) years to four (4) years, in conformity with Section 93 of the Kentucky Constitution. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workers' Claims: Workers' Claims

803 KAR 25 069 & E. Workers' compensation medical fee schedule for physicians. Dwight Lovam, commissioner, and Carla Montgomery, general counsel, represented the department.

In response to a question by Senator Tapp, Mr. Lovan stated that fees were generally the same among counties that CPT codes were the same, but certain procedures were region-specific.

In response to questions by Co-Chair Damron, Mr. Lovan stated that the fee variance was too great to define a comprehensive fee amount increase. Mr. Lovan also stated that these amendments did not relate to the American Medical Association manual. He stated that the department did not receive public comments opposed to the fee schedule, and was required by statute to update this administrative regulation every two (2) years.

In response to a question by Senator Tapp, Mr. Lovan stated that the fee structure was the same for CPT code procedures, but region-specific for certain other procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 5 to comply with the drafting requirements of KRS 13A.222(4)(a). Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Insurance Contracts

806 KAR 14 007. Rate and form filing for health insurers. John Burkholder, deputy commissioner, Brenda Parker, branch manager; and Melea Rivera, health policy specialist, represented the department.

In response to a question by Co-Chair Roeding, Mr. Burkholder stated that the department was not raising rates in this administrative regulation.

Health Insurance Contracts

806 KAR 17 005. Health insurance forms and reports. Senator Tapp stated that he had noticed an increase in health insurance rates.

In response to a question by Co-Chair Roeding, Mr. Burkholder stated that this administrative regulation did not establish any new reporting requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to correct the names of required forms. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17 200. Registration, utilization review, and internal appeal.

In response to a question by Co-Chair Roeding, Mr. Burkholder stated that this administrative regulation and 806 KAR 17 200 were amended for clarity.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 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.

806 KAR 17 290. Independent external review program. A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, 6, and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17 500. Basic health benefit plan requirements.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Controlled Substances

902 KAR 55 030. Schedule IV substances. Stephanie Bramer-Bames, regulation coordinator; Sadiqa Reynolds, inspector general; and David Sallenger, branch manager, represented the office. The following people appeared in support of this administrative regulation: Michael Burleson, executive director, representing the Kentucky Board of Pharmacy; Brian Fingerson, pharmacist, representing the Kentucky Professionals Recovery Network; Eliza Bill Darth, DNP, CFNP, nursing practice consultant, representing the Kentucky Coalition of Nurse Practitioners and Nurse Midwives; Matt Thomerson, detective, representing the Louisville Metro Police Drug Unit; Richard F. Stone, president, representing the Kentucky Pharmacists Association; and Van Ingram, acting executive director, representing the Kentucky Office of Drug Policy Control. The following people appeared in opposition to this administrative regulation: Edgar Adams, ScD, executive director of epidemiology, representing Covance; Richard Darf, MD, PhD, director of the RADAR system, representing the Denver Health and Hospital Authority; Danna Droz, prescription drug monitoring program administrator, representing the Ohio State Board of Pharmacy; and Gary Vorsanger, PhD, MD, senior director of clinical development, representing Ortho McNeil Janssen Scientific Affairs.

Ms. Reynolds stated that the Drug Enforcement Agency Web site lists Tramadol as a drug of concern, since it may induce dependency. The Food and Drug Administration's MedWatch has voluntarily reported problems with Tramadol. An LRC Program Review and Investigations Committee study recommended that the Office of Inspector General consider scheduling Tramadol. In an open-response survey, seventy (70) percent of pharmacists reported Tramadol as prime to fraud and abuse or reported the need for Tramadol to be scheduled. She stated that law enforcement, pharmacies, and physicians have reported problems with Tramadol. She stated that Tramadol has been scheduled in Arkansas and has been monitored in Ohio.

Detective Thomerson stated that the Louisville Metro Police Department received complaints regarding Tramadol on a weekly basis. He stated that, since Tramadol was not scheduled, the police could not usually make arrests related to Tramadol abuse or fraud.

In response to a question by Co-Chair Roeding, Ms. Reynolds stated that KASPER's authorizing statutes did not permit tracking nonscheduled drugs, such as Tramadol.

Mr. Burleson stated that the Drug Enforcement Agency recommended that Tramadol be scheduled. He stated that the Board of Pharmacy was aware of numerous reports of problems with Tramadol and that the board recommended scheduling Tramadol as a Schedule IV drug.

Mr. Stone stated that the Kentucky Pharmacists Association voted unanimously in support of the proposal to schedule Tramadol.

Mr. Fingerson stated that Tramadol was abused, had been a drug of choice, and was easily diverted because it was not scheduled.

Ms. Pantin stated that the Kentucky Coalition of Nurse Practitioners and Nurse Midwives recognized that Tramadol was bought and sold on the street. She stated that Tramadol needed to be scheduled.

Mr. Ingram stated that Tramadol (Ultram) needed to be scheduled.

Ms. Reynolds stated that RADER (Research on Adverse Drug Events and Reports) studies were being funded by drug compa-
Dr. Vorsanger stated that he was responsible for risk management for postmarket pain drugs, including Tramadol. Arkansas scheduled Tramadol in July 2007 and its scheduling had unintended consequences.

Dr. Adams stated that he was responsible for the nation's drug abuse monitoring program and that he had monitored Tramadol since 1992. In Germany, Tramadol was widely prescribed and rarely abused. Only 500 seizures in the Unites States were Tramadol-related and Tramadol abuse had not reached a level of national concern for scheduling. He believed that scheduling Tramadol would impede its legitimate uses and that scheduling Tramadol could have unintended consequences. He stated, for example, that in Arkansas, since the scheduling of Tramadol, use had risen of the more toxic drug, Darvon.

Dr. Dart stated that while RADAR did not recommend drug scheduling, Tramadol studies indicated a low, constant abuse rate in Kentucky that was the same as the United States in general. He stated that after scheduling, Arkansas data indicated the same level of abuse as before scheduling.

In response to a question by Representative Ford, Dr. Dart stated the manufacturers of Tramadol asked him to testify at the meeting.

Ms. Droz stated that she represented Ohio and that, in Ohio for law enforcement purposes, all drug misuse carried the same penalty as controlled substances. Ms. Droz stated that she had three (3) recommendations for Kentucky: (1) Pharmacies should keep records of purchases and sales to aid in trading; (2) Kentucky should add a law regarding deception to obtain drugs illegally, such as phone-in forgeries; and (3) Kentucky should allow KASPER to monitor nonscheduled substances.

In response to a question by Senator Kerr, Dr. Adams stated that the level of misuse of Tramadol was the same as the level of abuse for NSAIDs. Dr. Adams also stated that there were 700 cases of Tramadol abuse reported. He stated that, in Egypt, prescriptions for Tramadol decreased after its scheduling and resumed regular prescription levels after the descheduling of Tramadol.

Mr. Salonc stated that the office of Inspector General received many complaints regarding Tramadol, including reports of abuse, withdrawal, and dependency.

Ms. Reynolds stated that statistics for Tramadol abuse in Germany were irrelevant. She stated that data from eastern Kentucky indicated abuse of OxyContin and data from Jefferson County indicated abuse of Hydrocodone; therefore, drug use may be region-specific. She also stated that Tramadol was a problem in Kentucky and needed to be addressed.

In response to questions by Representative Weston, Dr. Adams stated that, once a drug was scheduled, prescriptions for that drug dropped because of regulatory oversight, fear of addicting patients, and patients' fear of addiction. He stated that the result may be under-treatment of pain. Dr. Adams also stated that, in Arkansas, prescriptions of Tramadol decreased after its scheduling, but prescriptions of other scheduled drugs, such as Darvon, rose. He stated that the problem with scheduling Tramadol after reported abuses in Kentucky was that there may be unintended consequences or undertreatment of pain.

Dr. Vorsanger stated that decisions about scheduling Tramadol should be based on sound scientific studies rather than anecdotal evidence. He also stated that the rates of abuse of Tramadol did not change after scheduling, but legitimate pain management declined. He also stated that scheduling OxyContin and Vicodin did not stop or control the abuse of those drugs.

In response to questions by Senator Tapp, Dr. Dart stated that the data regarding Kentucky abuse of Tramadol came from law enforcement questionnaires. He also stated that they did not question pharmacists.

In response to a question by Senator Kerr, Dr. Vorsanger stated that there were not a lot of drug alternatives to Tramadol for pain categories for which Tramadol was prescribed.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify that the administrative regulation differs from the federal requirements by including several drugs on the Schedule IV controlled substance list, due to their significant abuse potential; and (2) to amend Section 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.

The following administrative regulations were deferred to the November 12, 2008, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified
101 KAR 2.065 & E. Certification and selection of eligibles for appointment.

REVENUE CABINET: General Administration
103 KAR 1.150. Electronic data match and levy procedures.

GENERAL GOVERNMENT CABINET: Kentucky Real Estate Appraisers Board: Board
201 KAR 30:00. Types of appraisers required in federally-related transactions; certification and licensure.

Kentucky Board of Licensure for Private Investigators: Board
201 KAR 41:020. Application for licensure.
201 KAR 41:040. Fees.
201 KAR 41:060. Renewal and reinstatement procedures.
201 KAR 41:065. Inactive status.
201 KAR 41:070. Continuing professional education requirements.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Board of Emergency Medical Services: Board
202 KAR 7 030. Fees of the board. Charles O'Neal, executive director, and Lee Rowland, deputy general counsel, represented the board. Tim Pickering, director of public affairs for Air Evac Life team, appeared in support of this administrative regulation and represented the emergency medical services industry.

In response to a question by Co-Chair Roeding, Mr. O'Neal stated that the fees were necessary to fill three (3) of the board's current five (5) vacancies. Mr. O'Neal also stated that the board received only one (1) public comment opposing the fees and had not increased fees since 2000.

In response to a question by Co-Chair Darnon, Mr. O'Neal stated that none of the board's budget was redirected by the budget bill and that fees would generate only enough revenue to provide for the necessities of the board.

In response to a question by Senator Tapp, Mr. O'Neal stated that, in addition to the three (3) employees to be hired, the fees were needed to replace field staff vehicles and for other capital expenses stemming from the agency's transfer from the general government cabinet to KCTCS.

In response to a question by Representative Weston, Mr. O'Neal stated that he agreed that the board should have raised fees incrementally rather than waiting until the need was significant, but he had been executive director only since February of this year. Mr. O'Neal also stated that the board's General Fund allocations have been significantly reduced in this budget cycle.

In response to questions by Senator Tapp, Mr. O'Neal stated that approximately sixty (60), or at least over fifty (50), percent of the board's funding came from General Fund allocations. Mr. O'Neal also stated that the board hoped to reduce fees in the future if financial situations improved.

In response to questions by Representative Ford, Mr. O'Neal stated that the fee for air ambulance providers was new. Mr. O'Neal also stated that the revenue from the fee was used to process license transfers, which may involve such things as inspecting aircraft. The fee was the same regardless of the number of ambulances involved.

In response to questions by Co-Chair Roeding, Mr. O'Neal stated that there was a maximum penalty established by the statute. Mr. Pickering stated that his company agreed with the fee increase. Mr. O'Neal stated that the smallest fee increases affect volunteer positions in efforts to deter volunteers.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, 6, 7, and 9 to comply with

-1383-
the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to a question by Co-Chair Damron, Mr. O'Neal stated that the board agreed to deferral of consideration to the November 12 meeting of the Subcommittee.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2:300. Black beans.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Water Quality Standards
401 KAR 10:001 & E. Definitions for 401 KAR Chapter 10.
401 KAR 10:026. Designation of uses of surface waters.
401 KAR 10 029. General provisions.
401 KAR 10.030. Antidegradation policy implementation methodology.
401 KAR 10:031. Surface water standards.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

Department of Kentucky State Police: Criminal History

TRANSPORTATION CABINET: Department of Highways: Traffic
603 KAR 5:320. Safety in highway work zones.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance
702 KAR 3:080. Fidelity bond, penal sum for treasurer, finance officer and others.

School Terms, Attendance and Operation
702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.
702 KAR 7:130 & E. Approval of innovative alternate school calendars.

Office of Instruction

Department for Workforce Investment: Unemployment Insurance
787 KAR 1:110. Appeals.

PUBLIC PROTECTION CABINET: Department of Insurance: Assets and Liabilities
806 KAR 6:130. Minimum standards for determining reserve liabilities and nonforfeiture values for preneed insurance.

Health Insurance Contracts
806 KAR 17:540 & E. ICARE Program high-cost conditions.
806 KAR 17:545 & E. ICARE Program employer eligibility, application process, and requirements.
806 KAR 17:555 & E. ICARE Program requirements.

Horse Racing Commission: Thoroughbred Racing
810 KAR 1:012. Horses.
810 KAR 1:015. Claiming races.
810 KAR 1:025. Licensing thoroughbred racing.

Harness Racing
811 KAR 1:070. Licensing standardbred racing.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health
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 LOCAL GOVERNMENT
Meeting of September 24, 2008

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of September 24, 2008, having been referred to the Committee on September 9, 2008, pursuant to KRS 13A.290(6):

815 KAR 7:070
815 KAR 7:125

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:

601 KAR 13:070

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 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 October 6, 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 October 6, 2008, having been referred to the Committee on September 9, 2008, pursuant to KRS 13A.290(6):

301 KAR 2:062
301 KAR 2:132
301 KAR 2:176
301 KAR 4:070
401 KAR 6:012
401 KAR 5:052
401 KAR 6:001
401 KAR 6:310
401 KAR 6:320
401 KAR 6:350
401 KAR 8:020

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:

301 KAR 2:132

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 6, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

- 1385 -
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.

Technical Amendment Index

The Technical Amendment Index is a list of administrative regulations which have had technical, nontobstantive amendments entered since being published in the 2007 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

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.
LOCATOR INDEX - EFFECTIVE DATES

### VOLUME 34

The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Not: Emergency regulations expire 180 days from the date filed, or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>34 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>34 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>103 KAR 3:010E</td>
<td>2066</td>
<td>2-11-08</td>
<td>Amended</td>
<td>201 KAR 21:095</td>
<td>1792</td>
</tr>
<tr>
<td>Replaced</td>
<td></td>
<td></td>
<td>Amended</td>
<td>201 KAR 23:015</td>
<td>1533</td>
</tr>
<tr>
<td>103 KAR 3:030E</td>
<td>2266</td>
<td>2-19-08</td>
<td>Amended</td>
<td>201 KAR 25:225</td>
<td>2423</td>
</tr>
<tr>
<td>Replaced</td>
<td></td>
<td></td>
<td>As Amended</td>
<td>201 KAR 33:020</td>
<td>781</td>
</tr>
<tr>
<td>103 KAR 3:040E</td>
<td>1925</td>
<td>1-15-08</td>
<td>Amended</td>
<td>2528</td>
<td></td>
</tr>
<tr>
<td>Replaced</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>201 KAR 20:070E</td>
<td>2500</td>
<td>5-5-08</td>
<td>Amended</td>
<td>2211</td>
<td></td>
</tr>
<tr>
<td>201 KAR 30:190E</td>
<td>1628</td>
<td>12-14-07</td>
<td>Amended</td>
<td>2529</td>
<td></td>
</tr>
<tr>
<td>307 KAR 1:040E</td>
<td>909</td>
<td>10-8-07</td>
<td>Amended</td>
<td>2427</td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:010E</td>
<td>2275</td>
<td>3-3-08</td>
<td>Amended</td>
<td>2213</td>
<td></td>
</tr>
<tr>
<td>503 KAR 1:190E</td>
<td>2069</td>
<td>2-6-08</td>
<td>Amended</td>
<td>2215</td>
<td></td>
</tr>
<tr>
<td>Replaced</td>
<td></td>
<td></td>
<td>As Amended</td>
<td>(See 35 Ky.R.)</td>
<td></td>
</tr>
<tr>
<td>900 KAR 6:050E</td>
<td>2502</td>
<td>4-29-08</td>
<td>Amended</td>
<td>(See 35 Ky.R.)</td>
<td></td>
</tr>
<tr>
<td>900 KAR 7:190E</td>
<td>953</td>
<td>9-18-37</td>
<td>Amended</td>
<td>(See 35 Ky.R.)</td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:015E</td>
<td>164</td>
<td>7-12-07</td>
<td>Amended</td>
<td>(See 35 Ky.R.)</td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:160E</td>
<td>1653</td>
<td>12-5-07</td>
<td>Amended</td>
<td>(See 35 Ky.R.)</td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:182E</td>
<td>1381</td>
<td>11-15-07</td>
<td>Amended</td>
<td>(See 35 Ky.R.)</td>
<td></td>
</tr>
</tbody>
</table>

**ORDINARY ADMINISTRATIVE REGULATIONS:**

<p>| 11 KAR 4:060      | 2322              | 8-1-08        | Amended           | 2222              |
| 11 KAR 5:145      | 2323              | 8-1-08        | Amended           | 2529              |
| 11 KAR 18:010     | 2325              | 8-1-08        | Amended           | 2323              |
| 16 KAR 7:010      | 2413              | 1-1-08        | Amended           | 2413              |
| 101 KAR 1:335     | 2419              | (See 35 Ky.R.)| Amended           | 2419              |
| 103 KAR 3:030     | 2457              | (See 35 Ky.R.)| Amended           | 2457              |
| 103 KAR 3:180     | 2329              |              | Amended           | 2329              |
| 103 KAR 31:180    | 2516              |              | Amended           | 2442              |
| 103 KAR 31:180    | 1592              |              | Amended           | 2224              |
| 103 KAR 50:050    | 2524              |              | Amended           | 2562              |
| 201 KAR 2:220     | 2421              |              | Amended           | 2564              |
| 201 KAR 7:015     | 2421              | 8-1-08        | Amended           | 2439              |
| 201 KAR 16:110    | 2557              |              | Amended           | (See 35 Ky.R.)    |
| Amended           | 2557              |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 18:210    | 1528              |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:070    | 1948              |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:110    | 8283              |              | Amended           | 2369              |
| 201 KAR 20:161    | 201 KAR 9:010     |              | Amended           | 2370              |
| 201 KAR 20:225    | 201 KAR 9:020     |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 32:010    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 32:050    |              | Amended           | (See 35 Ky.R.)    |
| Amended           | 201 KAR 34:005    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 34:080    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 35:005    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 35:080    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 36:030    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 37:005    |              | Amended           | (See 35 Ky.R.)    |
| 201 KAR 20:360    | 201 KAR 37:040    |              | Amended           | (See 35 Ky.R.)    |</p>
<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>34 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>34 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 401 KAR 38:005</td>
<td>2468</td>
<td>(See 35 Ky.R.)</td>
<td>900 KAR 7:020</td>
<td>1334</td>
<td></td>
</tr>
<tr>
<td>Amended 401 KAR 38:040</td>
<td>2470</td>
<td>(See 35 Ky.R.)</td>
<td>902 KAR 55:000</td>
<td>2607</td>
<td>(See 35 Ky.R.)</td>
</tr>
<tr>
<td>Amended 401 KAR 43:005</td>
<td>2474</td>
<td>(See 35 Ky.R.)</td>
<td>902 KAR 55:110</td>
<td>2609</td>
<td>(See 35 Ky.R.)</td>
</tr>
<tr>
<td>Amended 500 KAR 14:010</td>
<td>2475</td>
<td>(See 35 Ky.R.)</td>
<td>907 KAR 1:013</td>
<td>1560</td>
<td></td>
</tr>
<tr>
<td>Amended 500 KAR 14:020</td>
<td>2580</td>
<td>7-18-08</td>
<td>907 KAR 1:180</td>
<td>1834</td>
<td></td>
</tr>
<tr>
<td>Amended 501 KAR 3:140</td>
<td>2582</td>
<td>7-18-08</td>
<td>907 KAR 1:479</td>
<td>2315</td>
<td>7-7-08</td>
</tr>
<tr>
<td>Amended 501 KAR 6:120</td>
<td>2345</td>
<td>7-7-08</td>
<td>908 KAR 3 050</td>
<td>2350</td>
<td>(See 35 Ky.R.)</td>
</tr>
<tr>
<td>Amended 501 KAR 6:140</td>
<td>2586</td>
<td>(See 35 Ky.R.)</td>
<td>908 KAR 3 060</td>
<td>2352</td>
<td>(See 35 Ky.R.)</td>
</tr>
<tr>
<td>Amended 501 KAR 6:999</td>
<td>2231</td>
<td>(See 35 Ky.R.)</td>
<td>910 KAR 1:160</td>
<td>1860</td>
<td></td>
</tr>
<tr>
<td>Amended 501 KAR 7:070</td>
<td>2531</td>
<td>7-7-08</td>
<td>912 KAR 3 030</td>
<td>2623</td>
<td>(See 35 Ky.R.)</td>
</tr>
<tr>
<td>Amended 502 KAR 3:270</td>
<td>2481</td>
<td>8-1-08</td>
<td>921 KAR 1:400</td>
<td>1870</td>
<td></td>
</tr>
<tr>
<td>Amended 503 KAR 1:190</td>
<td>2534</td>
<td>7-7-08</td>
<td>921 KAR 1:410</td>
<td>2143</td>
<td></td>
</tr>
<tr>
<td>Amended 507 KAR 2:015</td>
<td>633</td>
<td>(See 35 Ky.R.)</td>
<td>921 KAR 1:430</td>
<td>1909</td>
<td></td>
</tr>
<tr>
<td>Amended 508 KAR 12:180</td>
<td>1600</td>
<td>(See 35 Ky.R.)</td>
<td>921 KAR 2:015</td>
<td>2146</td>
<td></td>
</tr>
<tr>
<td>Amended 810 KAR 1:015</td>
<td>1220</td>
<td>(See 35 Ky.R.)</td>
<td>921 KAR 2:110</td>
<td>1879</td>
<td></td>
</tr>
<tr>
<td>Amended 815 KAR 7:120</td>
<td>2053</td>
<td>(See 35 Ky.R.)</td>
<td>922 KAR 2:170</td>
<td>2152</td>
<td></td>
</tr>
<tr>
<td>Amended 815 KAR 7:125</td>
<td>2590</td>
<td>(See 35 Ky.R.)</td>
<td>922 KAR 2:210</td>
<td>2547</td>
<td>6-18-08</td>
</tr>
<tr>
<td>Amended 900 KAR 6 050</td>
<td>2549</td>
<td>(See 35 Ky.R.)</td>
<td>922 KAR 2:210</td>
<td>1290</td>
<td>6-18-08</td>
</tr>
</tbody>
</table>

**VOLUME 35**

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>34 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>34 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 KAR 4:140E</td>
<td>505</td>
<td>6-6-08</td>
<td>502 KAR 15:010E</td>
<td>229</td>
<td>7-15-08</td>
</tr>
<tr>
<td>101 KAR 2:068E</td>
<td>507</td>
<td>7-18-08</td>
<td>502 KAR 32:010E</td>
<td>230</td>
<td>7-1-08</td>
</tr>
<tr>
<td>101 KAR 2:210E</td>
<td>1130</td>
<td>9-15-08</td>
<td>601 KAR 1 040E</td>
<td>1124</td>
<td>9-29-08</td>
</tr>
<tr>
<td>105 KAR 1:140E</td>
<td>709</td>
<td>9-2-08</td>
<td>702 KAR 7:130E</td>
<td>233</td>
<td>6-13-08</td>
</tr>
<tr>
<td>105 KAR 1:345E</td>
<td>711</td>
<td>9-2-08</td>
<td>803 KAR 25:089E</td>
<td>234</td>
<td>7-1-08</td>
</tr>
<tr>
<td>105 KAR 1:380E</td>
<td>712</td>
<td>9-2-08</td>
<td>803 KAR 25:091E</td>
<td>236</td>
<td>6-18-08</td>
</tr>
<tr>
<td>105 KAR 1:390E</td>
<td>715</td>
<td>9-2-08</td>
<td>806 KAR 2:092E</td>
<td>512</td>
<td>8-14-08</td>
</tr>
<tr>
<td>105 KAR 1:400E</td>
<td>719</td>
<td>9-2-08</td>
<td>806 KAR 15:080E</td>
<td>514</td>
<td>8-14-08</td>
</tr>
<tr>
<td>105 KAR 1:420E</td>
<td>722</td>
<td>9-5-08</td>
<td>806 KAR 17:180E</td>
<td>238</td>
<td>7-15-08</td>
</tr>
<tr>
<td>105 KAR 1:430E</td>
<td>724</td>
<td>9-2-08</td>
<td>806 KAR 17:540E</td>
<td>516</td>
<td>7-15-08</td>
</tr>
<tr>
<td>200 KAR 5:390E</td>
<td>509</td>
<td>7-17-08</td>
<td>806 KAR 17:545E</td>
<td>518</td>
<td>7-15-08</td>
</tr>
<tr>
<td>201 KAR 27:100E</td>
<td>221</td>
<td>7-15-08</td>
<td>806 KAR 17:555E</td>
<td>521</td>
<td>7-15-08</td>
</tr>
<tr>
<td>202 KAR 7:330E</td>
<td>226</td>
<td>7-11-08</td>
<td>810 KAR 1:031E</td>
<td>731</td>
<td>9-5-08</td>
</tr>
<tr>
<td>301 KAR 2:083E</td>
<td>725</td>
<td>8-29-08</td>
<td>810 KAR 1:032E</td>
<td>739</td>
<td>9-5-08</td>
</tr>
<tr>
<td>301 KAR 2:223E</td>
<td>729</td>
<td>8-29-08</td>
<td>810 KAR 1:062E</td>
<td>744</td>
<td>9-5-08</td>
</tr>
<tr>
<td>302 KAR 7:6110E</td>
<td>5</td>
<td>6-4-08</td>
<td>811 KAR 1:090E</td>
<td>752</td>
<td>9-5-08</td>
</tr>
<tr>
<td>302 KAR 7:9310E</td>
<td>510</td>
<td>6-18-08</td>
<td>811 KAR 1:095E</td>
<td>240</td>
<td>6-16-08</td>
</tr>
<tr>
<td>307 KAR 1:050E</td>
<td>1132</td>
<td>10-10-08</td>
<td>807 KAR 1:835E</td>
<td>524</td>
<td>7-17-08</td>
</tr>
<tr>
<td>401 KAR 10:001E</td>
<td>6</td>
<td>6-12-08</td>
<td>807 KAR 1:911E</td>
<td>248</td>
<td>6-16-08</td>
</tr>
<tr>
<td>401 KAR 10:002E</td>
<td>229</td>
<td>7-15-08</td>
<td>921 KAR 2:370E</td>
<td>1137</td>
<td>9-29-08</td>
</tr>
<tr>
<td>401 KAR 10:003E</td>
<td>510</td>
<td>7-21-08</td>
<td>922 KAR 3:020E</td>
<td>1142</td>
<td>9-29-08</td>
</tr>
<tr>
<td>401 KAR 10:004E</td>
<td>1132</td>
<td>10-10-08</td>
<td>922 KAR 3:045E</td>
<td>1147</td>
<td>9-29-08</td>
</tr>
<tr>
<td>401 KAR 10:005E</td>
<td>6</td>
<td>6-12-08</td>
<td>922 KAR 1:360E</td>
<td>250</td>
<td>6-30-08</td>
</tr>
<tr>
<td>Regulation Number</td>
<td>35 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
<td>35 Ky.R. Page No.</td>
<td>Effective Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------</td>
<td>---------------</td>
<td>-------------------</td>
<td>------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>ORDINARY ADMINISTRATIVE REGULATIONS:</td>
<td>As Amended</td>
<td>536</td>
<td>105 KAR 1:210</td>
<td>10-3-08</td>
<td></td>
</tr>
<tr>
<td>10 KAR 7:010</td>
<td>1237</td>
<td></td>
<td>105 KAR 1:210</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 KAR 7:020</td>
<td>1239</td>
<td></td>
<td>105 KAR 1:220</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 3:100</td>
<td>63</td>
<td></td>
<td>105 KAR 1:220</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 5:200</td>
<td>949</td>
<td></td>
<td>105 KAR 1:240</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 8:030</td>
<td>950</td>
<td></td>
<td>105 KAR 1:270</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 8:040</td>
<td>954</td>
<td></td>
<td>105 KAR 1:310</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 14:060</td>
<td>957</td>
<td></td>
<td>105 KAR 1:330</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 14:080</td>
<td>959</td>
<td></td>
<td>105 KAR 1:345</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 15:090</td>
<td>961</td>
<td></td>
<td>105 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 KAR 18:010</td>
<td>10</td>
<td>8-1-08</td>
<td>105 KAR 1:370</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 KAR 3:050</td>
<td>805</td>
<td></td>
<td>105 KAR 1:380</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 KAR 5:020</td>
<td>77</td>
<td></td>
<td>105 KAR 1:390</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 KAR 7:010</td>
<td>535</td>
<td></td>
<td>105 KAR 1:400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 KAR 3:020</td>
<td>11</td>
<td></td>
<td>105 KAR 1:420</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 KAR 4:020</td>
<td>611</td>
<td></td>
<td>105 KAR 1:430</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 KAR 4:021</td>
<td>1369</td>
<td></td>
<td>200 KAR 5:390</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 KAR 5:010</td>
<td>1093</td>
<td></td>
<td>200 KAR 17:090</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31 KAR 4:140</td>
<td>612</td>
<td></td>
<td>201 KAR 1:180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>101 KAR 1:35</td>
<td>256</td>
<td>9-5-08</td>
<td>201 KAR 1:180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>101 KAR 2:066</td>
<td>614</td>
<td></td>
<td>201 KAR 1:171(7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>101 KAR 2:210</td>
<td>1243</td>
<td></td>
<td>201 KAR 2:105</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>101 KAR 2:221</td>
<td>16</td>
<td>8-1-08</td>
<td>201 KAR 9:011</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>103 KAR 1:150</td>
<td>675</td>
<td></td>
<td>201 KAR 10:050</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>103 KAR 3:020</td>
<td>82</td>
<td></td>
<td>201 KAR 14:150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>103 KAR 3:050</td>
<td>87</td>
<td></td>
<td>201 KAR 17:014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>103 KAR 30:091</td>
<td>764</td>
<td></td>
<td>201 KAR 17:030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amendment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:130</td>
<td>95</td>
<td></td>
<td>201 KAR 18:072</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:140</td>
<td>515</td>
<td></td>
<td>201 KAR 18:210</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:160</td>
<td>580</td>
<td></td>
<td>201 KAR 20:070</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:170</td>
<td>772</td>
<td></td>
<td>201 KAR 28:090</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:180</td>
<td>452</td>
<td></td>
<td>201 KAR 30:010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:200</td>
<td>777</td>
<td></td>
<td>201 KAR 30:010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation Number</td>
<td>35 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
<td>35 Ky.R. Page No.</td>
<td>Effective Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
<td>---------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>201 KAR 30 030</td>
<td>618</td>
<td>As Amended</td>
<td>794</td>
<td>(See 34 Ky.R.)</td>
<td>7-9-06</td>
</tr>
<tr>
<td>Amended</td>
<td>318</td>
<td>As Amended</td>
<td>301 KAR 2:178</td>
<td>28</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>As Amended</td>
<td>783</td>
<td>Arranged</td>
<td>301 KAR 2:225</td>
<td>1005</td>
<td></td>
</tr>
<tr>
<td>201 KAR 35 040</td>
<td>320</td>
<td>As Amended</td>
<td>301 KAR 2:227(t)</td>
<td>1099</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>764</td>
<td>Arranged</td>
<td>301 KAR 2.251</td>
<td>1008</td>
<td></td>
</tr>
<tr>
<td>201 KAR 35 050</td>
<td>324</td>
<td>As Amended</td>
<td>301 KAR 4.110</td>
<td>1100</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>787</td>
<td>Arranged</td>
<td>301 KAR 2 300</td>
<td>349</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>201 KAR 35 060</td>
<td>461</td>
<td>As Amended</td>
<td>301 KAR 3/022</td>
<td>555</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>787</td>
<td>Arranged</td>
<td>301 KAR 4 070</td>
<td>352</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>799</td>
<td>Arranged</td>
<td>302 KAR 20:110</td>
<td>796</td>
<td></td>
</tr>
<tr>
<td>201 KAR 35 080</td>
<td>465</td>
<td>As Amended</td>
<td>307 KAR 1:050</td>
<td>1247</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>1153</td>
<td>Arranged</td>
<td>302 KAR 20:120</td>
<td>1249</td>
<td></td>
</tr>
<tr>
<td>201 KAR 41 020</td>
<td>620</td>
<td>As Amended</td>
<td>401 KAR 5:010</td>
<td>1251</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>622</td>
<td>Arranged</td>
<td>401 KAR 5:012</td>
<td>1251</td>
<td></td>
</tr>
<tr>
<td>201 KAR 41 040</td>
<td>622</td>
<td>As Amended</td>
<td>401 KAR 5:052</td>
<td>680</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>624</td>
<td>Arranged</td>
<td>401 KAR 5:057</td>
<td>1167</td>
<td></td>
</tr>
<tr>
<td>201 KAR 41 065</td>
<td>679</td>
<td>As Amended</td>
<td>401 KAR 6:001</td>
<td>354</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>626</td>
<td>Arranged</td>
<td>401 KAR 6:012</td>
<td>1205</td>
<td></td>
</tr>
<tr>
<td>202 KAR 7:030</td>
<td>326</td>
<td>As Amended</td>
<td>401 KAR 6:310</td>
<td>470</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>850</td>
<td>Arranged</td>
<td>401 KAR 6:350</td>
<td>471</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>1153</td>
<td>Arranged</td>
<td>401 KAR 9:010</td>
<td>797</td>
<td></td>
</tr>
<tr>
<td>202 KAR 7:330</td>
<td>467</td>
<td>As Amended</td>
<td>401 KAR 9:012</td>
<td>359</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>401 KAR 6:310</td>
<td>Arranged</td>
<td>401 KAR 9 020</td>
<td>1168</td>
<td></td>
</tr>
<tr>
<td>300 KAR 6 020</td>
<td>204</td>
<td>As Amended</td>
<td>401 KAR 6 020</td>
<td>585</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>As Amended</td>
<td>544</td>
<td>Arranged</td>
<td>401 KAR 6 020</td>
<td>797</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>301 KAR 1:125</td>
<td>992</td>
<td>As Amended</td>
<td>401 KAR 6 020</td>
<td>798</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>Amended</td>
<td>20</td>
<td>Arranged</td>
<td>401 KAR 6 020</td>
<td>7-9-08</td>
<td></td>
</tr>
<tr>
<td>301 KAR 1:130</td>
<td>548</td>
<td>As Amended</td>
<td>401 KAR 6 020</td>
<td>601</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>As Amended</td>
<td>549</td>
<td>Arranged</td>
<td>401 KAR 6 020</td>
<td>605</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>301 KAR 1:145</td>
<td>550</td>
<td>As Amended</td>
<td>401 KAR 6 020</td>
<td>811</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>As Amended</td>
<td>550</td>
<td>Arranged</td>
<td>401 KAR 6 020</td>
<td>34</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>301 KAR 1 201</td>
<td>335</td>
<td>As Amended</td>
<td>401 KAR 6 020</td>
<td>259</td>
<td>8-21-08</td>
</tr>
<tr>
<td>Amended</td>
<td>851</td>
<td>Arranged</td>
<td>401 KAR 9 020</td>
<td>35</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>301 KAR 1 410</td>
<td>1163</td>
<td>As Amended</td>
<td>401 KAR 10 001</td>
<td>815</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>Amended</td>
<td>995</td>
<td>Arranged</td>
<td>401 KAR 10 001</td>
<td>208</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>301 KAR 2 015</td>
<td>999</td>
<td>Arranged</td>
<td>401 KAR 10 026</td>
<td>856</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1000</td>
<td>Amended</td>
<td>401 KAR 10 026</td>
<td>129</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 015</td>
<td>21</td>
<td>Amended</td>
<td>401 KAR 10 026</td>
<td>860</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>340</td>
<td>Amended</td>
<td>401 KAR 10:029</td>
<td>157</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 040</td>
<td>23</td>
<td>Amended</td>
<td>401 KAR 10:030</td>
<td>904</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>340</td>
<td>Amended</td>
<td>401 KAR 10:030</td>
<td>161</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 081</td>
<td>790</td>
<td>Amended</td>
<td>401 KAR 10:030</td>
<td>908</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>1002</td>
<td>Amended</td>
<td>401 KAR 10 031</td>
<td>177</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 082</td>
<td>343</td>
<td>Amended</td>
<td>401 KAR 11:001</td>
<td>930</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>792</td>
<td>Amended</td>
<td>401 KAR 11:001</td>
<td>473</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 132</td>
<td>26</td>
<td>Amended</td>
<td>401 KAR 11:010</td>
<td>474</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>347</td>
<td>Amended</td>
<td>401 KAR 11:010</td>
<td>475</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 172</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>401 KAR 11:020</td>
<td>478</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>7-9-08</td>
<td>Amended</td>
<td>401 KAR 11:030</td>
<td>479</td>
<td></td>
</tr>
<tr>
<td>301 KAR 2 176</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>401 KAR 11:030</td>
<td>1213</td>
<td></td>
</tr>
</tbody>
</table>

E - 5
<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>35 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>35 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>401 KAR 11:050</td>
<td>479</td>
<td></td>
<td>601 KAR 13:070</td>
<td>818</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1216</td>
<td></td>
<td>As Amended</td>
<td>603 KAR 3:060</td>
<td>383</td>
</tr>
<tr>
<td>401 KAR 11:050</td>
<td>481</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>603 KAR 5:320</td>
<td>633</td>
</tr>
<tr>
<td>Amended</td>
<td>1219</td>
<td>8-21-06</td>
<td>605 KAR 1:060</td>
<td>1016</td>
<td></td>
</tr>
<tr>
<td>401 KAR 32:010</td>
<td>260</td>
<td>(See 34 Ky.R.)</td>
<td>As Amended</td>
<td>605 KAR 1:170</td>
<td>1018</td>
</tr>
<tr>
<td>Amended</td>
<td>261</td>
<td>8-21-06</td>
<td>Amended</td>
<td>702 KAR 7:130</td>
<td>483</td>
</tr>
<tr>
<td>401 KAR 34:060</td>
<td>262</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>702 KAR 3:060</td>
<td>635</td>
</tr>
<tr>
<td>Amended</td>
<td>265</td>
<td>8-21-06</td>
<td>Amended</td>
<td>702 KAR 3:270</td>
<td>556</td>
</tr>
<tr>
<td>401 KAR 35:005</td>
<td>266</td>
<td>(See 34 Ky.R.)</td>
<td>As Amended</td>
<td>702 KAR 4:160</td>
<td>32</td>
</tr>
<tr>
<td>As Amended</td>
<td>266</td>
<td>8-21-06</td>
<td>As Amended</td>
<td>702 KAR 5:060</td>
<td>1220</td>
</tr>
<tr>
<td>401 KAR 35:080</td>
<td>269</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>703 KAR 5:070</td>
<td>637</td>
</tr>
<tr>
<td>Amended</td>
<td>269</td>
<td>8-21-06</td>
<td>Amended</td>
<td>703 KAR 5:080</td>
<td></td>
</tr>
<tr>
<td>401 KAR 36 030</td>
<td>270</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>703 KAR 5:140</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>270</td>
<td>8-21-06</td>
<td>Amended</td>
<td>704 KAR 3 340</td>
<td></td>
</tr>
<tr>
<td>401 KAR 37:005</td>
<td>273</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>704 KAR 3 390</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>273</td>
<td>8-21-06</td>
<td>Amended</td>
<td>725 KAR 1:030</td>
<td></td>
</tr>
<tr>
<td>401 KAR 37:040</td>
<td>276</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>725 KAR 5:140</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>276</td>
<td>8-21-06</td>
<td>Amended</td>
<td>725 KAR 5:140</td>
<td></td>
</tr>
<tr>
<td>401 KAR 38:005</td>
<td>277</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>725 KAR 1:040</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>277</td>
<td>8-21-06</td>
<td>Amended</td>
<td>725 KAR 1:100</td>
<td></td>
</tr>
<tr>
<td>401 KAR 50:066</td>
<td>279</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>725 KAR 1:190</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>279</td>
<td>9-5-08</td>
<td>Amended</td>
<td>725 KAR 2:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 52:081(f)</td>
<td>280</td>
<td>(See 34 Ky.R.)</td>
<td>As Amended</td>
<td>725 KAR 2:305</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>280</td>
<td>9-5-08</td>
<td>As Amended</td>
<td>725 KAR 2:306</td>
<td></td>
</tr>
<tr>
<td>401 KAR 59:015</td>
<td>1102</td>
<td></td>
<td>As Amended</td>
<td>725 KAR 2:307</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1102</td>
<td></td>
<td>As Amended</td>
<td>725 KAR 2:309</td>
<td></td>
</tr>
<tr>
<td>401 KAR 59:017</td>
<td>1253</td>
<td></td>
<td>As Amended</td>
<td>725 KAR 2:310</td>
<td></td>
</tr>
<tr>
<td>401 KAR 60.021</td>
<td>1371</td>
<td></td>
<td>As Amended</td>
<td>725 KAR 2:315</td>
<td></td>
</tr>
<tr>
<td>401 KAR 61 005</td>
<td>211</td>
<td></td>
<td>As Amended</td>
<td>725 KAR 2:320</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1261</td>
<td></td>
<td>As Amended</td>
<td>803 KAR 2:180</td>
<td></td>
</tr>
<tr>
<td>500 KAR 3:010</td>
<td>286</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>803 KAR 2:300</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>286</td>
<td>9-5-08</td>
<td>Amended</td>
<td>803 KAR 2:305</td>
<td></td>
</tr>
<tr>
<td>500 KAR 3:020</td>
<td>280</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>803 KAR 2:306</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>280</td>
<td>9-5-08</td>
<td>Amended</td>
<td>803 KAR 2:307</td>
<td></td>
</tr>
<tr>
<td>501 KAR 3:140</td>
<td>1102</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>803 KAR 2:308</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>1102</td>
<td>9-5-08</td>
<td>Amended</td>
<td>803 KAR 2:309</td>
<td></td>
</tr>
<tr>
<td>501 KAR 6:140</td>
<td>279</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>803 KAR 2:310</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>279</td>
<td>9-5-08</td>
<td>Amended</td>
<td>803 KAR 2:315</td>
<td></td>
</tr>
<tr>
<td>501 KAR 6:200</td>
<td>280</td>
<td>(See 34 Ky.R.)</td>
<td>Amended</td>
<td>803 KAR 2:316</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>280</td>
<td>9-5-08</td>
<td>Amended</td>
<td>803 KAR 2:317</td>
<td></td>
</tr>
<tr>
<td>501 KAR 6:270</td>
<td>190</td>
<td></td>
<td>Amended</td>
<td>803 KAR 25:069</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>190</td>
<td></td>
<td>Amended</td>
<td>803 KAR 25:091</td>
<td></td>
</tr>
<tr>
<td>502 KAR 15:010</td>
<td>1010</td>
<td></td>
<td>Amended</td>
<td>803 KAR 25:091</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1010</td>
<td></td>
<td>Amended</td>
<td>803 KAR 25:091</td>
<td></td>
</tr>
<tr>
<td>502 KAR 30:060</td>
<td>377</td>
<td></td>
<td>Amended</td>
<td>803 KAR 25:091</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>377</td>
<td></td>
<td>1302</td>
<td>404</td>
<td></td>
</tr>
<tr>
<td>502 KAR 32:010</td>
<td>816</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>816</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>503 KAR 1:110</td>
<td>381</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>381</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>503 KAR 1:170</td>
<td>817</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>817</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>601 KAR 1:040</td>
<td>1012</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1012</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>601 KAR 1:040</td>
<td>1258</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1258</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
<tr>
<td>601 KAR 1:040</td>
<td>1274</td>
<td></td>
<td>404</td>
<td>1188</td>
<td></td>
</tr>
</tbody>
</table>

E - 6
<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>35 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>35 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended</td>
<td>1104</td>
<td></td>
<td>Amended</td>
<td>305</td>
<td></td>
</tr>
<tr>
<td>806 KAR 3:170</td>
<td>1304</td>
<td></td>
<td>As Amended</td>
<td>565</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>634</td>
<td></td>
<td>815 KAR 7:125</td>
<td>307</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>808 KAR 9:220</td>
<td>1023</td>
<td></td>
<td>Amended</td>
<td>567</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1105</td>
<td>10-3-08</td>
<td>815 KAR 35:060</td>
<td>195</td>
<td></td>
</tr>
<tr>
<td>806 KAR 12:180</td>
<td>560</td>
<td></td>
<td>As Amended</td>
<td>568</td>
<td>10-3-08</td>
</tr>
<tr>
<td>(See 34 Ky.R.)</td>
<td></td>
<td></td>
<td>Amended</td>
<td>198</td>
<td>10-3-08</td>
</tr>
<tr>
<td>806 KAR 14:007</td>
<td>650</td>
<td>10-3-08</td>
<td>As Amended</td>
<td>570</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>606</td>
<td></td>
<td>900 KAR 6:030</td>
<td>1088</td>
<td></td>
</tr>
<tr>
<td>806 KAR 15:060</td>
<td>1312</td>
<td></td>
<td>902 KAR 19:030</td>
<td>1319</td>
<td></td>
</tr>
<tr>
<td>808 KAR 17:005</td>
<td>652</td>
<td></td>
<td>As Amended</td>
<td>1118</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>902 KAR 45:150</td>
<td>1198</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>1119</td>
<td></td>
<td>Amended</td>
<td>433</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:300</td>
<td>1314</td>
<td></td>
<td>902 KAR 55:110</td>
<td>838</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>As Amended</td>
<td>283</td>
<td>9-5-08</td>
</tr>
<tr>
<td>806 KAR 17:061</td>
<td>1029</td>
<td>9-5-08</td>
<td>906 KAR 1:011(1)</td>
<td>1113</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>906 KAR 1:031(1)</td>
<td>1114</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:180</td>
<td>407</td>
<td></td>
<td>906 KAR 1:160</td>
<td>1322</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>654</td>
<td></td>
<td>906 KAR 1:170</td>
<td>1115</td>
<td></td>
</tr>
<tr>
<td>As Amended</td>
<td>1190</td>
<td></td>
<td>907 KAR 1:015</td>
<td>1190</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:290</td>
<td>658</td>
<td></td>
<td>Amended</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1193</td>
<td></td>
<td>Amended</td>
<td>943</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:310</td>
<td>409</td>
<td></td>
<td>907 KAR 1:026</td>
<td>436</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>823</td>
<td></td>
<td>Amended</td>
<td>841</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:360</td>
<td>411</td>
<td></td>
<td>907 KAR 1:479</td>
<td>1393</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>Amended</td>
<td>823</td>
<td></td>
<td>Amended</td>
<td>309</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:370</td>
<td>413</td>
<td></td>
<td>As Amended</td>
<td>571</td>
<td>10-3-08</td>
</tr>
<tr>
<td>Amended</td>
<td>907 KAR 1:626</td>
<td></td>
<td>Amended</td>
<td>442</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:500</td>
<td>664</td>
<td></td>
<td>907 KAR 1:825</td>
<td>464</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>667</td>
<td></td>
<td>Amended</td>
<td>1255</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:540</td>
<td>668</td>
<td></td>
<td>907 KAR 1:835</td>
<td>688</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>907 KAR 3:205</td>
<td>492</td>
<td></td>
</tr>
<tr>
<td>806 KAR 17:545</td>
<td></td>
<td></td>
<td>Amended</td>
<td>1233</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>908 KAR 3:050</td>
<td></td>
<td>Amended</td>
<td>284</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>808 KAR 10:041(1)</td>
<td>1107</td>
<td></td>
<td>910 KAR 1:160</td>
<td>285</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>808 KAR 10:042</td>
<td>1373</td>
<td>9-5-08</td>
<td>As Amended</td>
<td>285</td>
<td>9-5-08</td>
</tr>
<tr>
<td>808 KAR 10:440</td>
<td>1108</td>
<td></td>
<td>921 KAR 1:380</td>
<td>285</td>
<td></td>
</tr>
<tr>
<td>808 KAR 10:450</td>
<td>1110</td>
<td></td>
<td>921 KAR 2:006</td>
<td>1324</td>
<td></td>
</tr>
<tr>
<td>808 KAR 10:460</td>
<td>1374</td>
<td></td>
<td>921 KAR 2:016</td>
<td>1334</td>
<td></td>
</tr>
<tr>
<td>810 KAR 1:012</td>
<td>416</td>
<td></td>
<td>921 KAR 2:017</td>
<td>1341</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>418</td>
<td></td>
<td>921 KAR 2:017</td>
<td>1341</td>
<td>(See 34 Ky.R.)</td>
</tr>
<tr>
<td>810 KAR 1:025</td>
<td>1063</td>
<td></td>
<td>921 KAR 2:030</td>
<td>290</td>
<td>9-5-08</td>
</tr>
<tr>
<td>Amended</td>
<td>1070</td>
<td></td>
<td>921 KAR 2:370</td>
<td>1376</td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:070</td>
<td>426</td>
<td></td>
<td>921 KAR 3:020</td>
<td>1376</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>1316</td>
<td></td>
<td>922 KAR 1:050</td>
<td>1377</td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:075</td>
<td>1083</td>
<td></td>
<td>922 KAR 1:060</td>
<td>1377</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>191</td>
<td></td>
<td>922 KAR 1:100</td>
<td>1380</td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:095</td>
<td>563</td>
<td></td>
<td>922 KAR 1:140</td>
<td>1380</td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td></td>
<td>(See 34 Ky.R.)</td>
<td>922 KAR 1:140</td>
<td></td>
</tr>
</tbody>
</table>
### LOCATOR INDEX - EFFECTIVE DATES

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>35 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>35 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended</td>
<td>1365</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>922 KAR 1:310</td>
<td>49</td>
<td>(See 34 Ky.R.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>49</td>
<td></td>
<td>Amended</td>
<td>292</td>
<td>9-5-06</td>
</tr>
<tr>
<td>As Amended</td>
<td>446</td>
<td></td>
<td></td>
<td>845</td>
<td></td>
</tr>
</tbody>
</table>

* Statement of Consideration not filed by deadline  
** Withdrawn, not in effect within 1 year of publication  
*** Withdrawn before being printed in Register  

(*/Repealer regulation: KRS 13A.310-on the effective date  
of an administrative regulation that repeals another, the  
regulations compiler shall delete the repealed administra-
tive regulation and the repealing administrative regu-
lation.*
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.015</td>
<td>922 KAR 1:310</td>
<td>45A.695-45A.705</td>
<td>10 KAR 7.010</td>
</tr>
<tr>
<td>12501-12604</td>
<td>921 KAR 3:020</td>
<td>10 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>13A 100</td>
<td>500 KAR 3:020</td>
<td>45.031</td>
<td>200 KAR 17:00</td>
</tr>
<tr>
<td>13B 140</td>
<td>907 KAR 1:825</td>
<td>45A.053</td>
<td>10 KAR 7.010</td>
</tr>
<tr>
<td>15A 160</td>
<td>500 KAR 3:020</td>
<td>45A.075</td>
<td>10 KAR 7.010</td>
</tr>
<tr>
<td>15 310</td>
<td>503 KAR 1:170</td>
<td>10 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>15 330</td>
<td>503 KAR 1:170</td>
<td>10 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>15 380</td>
<td>906 KAR 1:160</td>
<td>10 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>15A 340</td>
<td>10 KAR 7.010</td>
<td>45A.133</td>
<td>10 KAR 7.010</td>
</tr>
<tr>
<td>15A 342</td>
<td>10 KAR 7.010</td>
<td>10 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>15A 344</td>
<td>10 KAR 7.010</td>
<td>10 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>15 386</td>
<td>503 KAR 1:110</td>
<td>45A.219</td>
<td>10 KAR 7.020</td>
</tr>
<tr>
<td>15 404</td>
<td>503 KAR 1:110</td>
<td>45A.233</td>
<td>10 KAR 7.020</td>
</tr>
<tr>
<td>15 440</td>
<td>503 KAR 1:110</td>
<td>45A.235</td>
<td>10 KAR 7.020</td>
</tr>
<tr>
<td>16 505</td>
<td>105 KAR 1:390</td>
<td>45A.237-241</td>
<td>921 KAR 2:017</td>
</tr>
<tr>
<td>16 505-16 652</td>
<td>105 KAR 1:210</td>
<td>45A.469</td>
<td>10 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:210</td>
<td>105 KAR 7.010</td>
<td></td>
</tr>
<tr>
<td>16 510-16 652</td>
<td>105 KAR 1:210</td>
<td>45A.725</td>
<td>10 KAR 7.010</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:210</td>
<td>61.360</td>
<td>10 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:210</td>
<td>61.645</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:210</td>
<td>61.510-61.705</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 578</td>
<td>105 KAR 1:200</td>
<td>61.510-61.705</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 577</td>
<td>105 KAR 1:200</td>
<td>61.510-61.705</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 577</td>
<td>105 KAR 1:200</td>
<td>61.526</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 578</td>
<td>105 KAR 1:200</td>
<td>61.525</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 578</td>
<td>105 KAR 1:200</td>
<td>61.525</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 601</td>
<td>105 KAR 1:200</td>
<td>61.526</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:200</td>
<td>61.530</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 540</td>
<td>105 KAR 1:200</td>
<td>61.540</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 640</td>
<td>105 KAR 1:200</td>
<td>61.540</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:200</td>
<td>61.542</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:200</td>
<td>61.542</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:200</td>
<td>61.546</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:200</td>
<td>61.5525</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>16 510</td>
<td>105 KAR 1:200</td>
<td>61.590</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>17 115</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 140</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 147</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 151</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 1522</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 160</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 160</td>
<td>502 KAR 30:060</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 170</td>
<td>922 KAR 1:310</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 170</td>
<td>502 KAR 32:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 170</td>
<td>502 KAR 32:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 172</td>
<td>502 KAR 32:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 173</td>
<td>502 KAR 32:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 174</td>
<td>502 KAR 32:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 175</td>
<td>502 KAR 32:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 500</td>
<td>922 KAR 1:310</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>17 550-17 991</td>
<td>501 KAR 6:200</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>18A 030</td>
<td>101 KAR 2:066</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>18A 110</td>
<td>101 KAR 2:066</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>18A 150</td>
<td>101 KAR 2:066</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>18A 105</td>
<td>101 KAR 2:066</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>18A 229</td>
<td>101 KAR 2:210</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>18A 229.54</td>
<td>101 KAR 2:210</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>40 320</td>
<td>17 KAR 3:020</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>40 325</td>
<td>17 KAR 3:020</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>40 353</td>
<td>17 KAR 5:010</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>40 355</td>
<td>17 KAR 4:020</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>40 357</td>
<td>17 KAR 4:020</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>42 470</td>
<td>103 KAR 3:050</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>45A</td>
<td>300 KAR 6 020</td>
<td>103 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>45A.005-45A.020</td>
<td>10 KAR 7.010</td>
<td>105 KAR 7.020</td>
<td></td>
</tr>
<tr>
<td>45A 035-45A.045</td>
<td>10 KAR 7.010</td>
<td>78.510</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>45A 035-45A.050</td>
<td>10 KAR 7.010</td>
<td>78.510-78.852</td>
<td>105 KAR 7.020</td>
</tr>
<tr>
<td>45A 230-45A.235</td>
<td>10 KAR 7.010</td>
<td>105 KAR 7.020</td>
<td></td>
</tr>
</tbody>
</table>

E - 9
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>78 520-78 852</td>
<td>105 KAR 1:345</td>
<td>134.430</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>78 540</td>
<td>105 KAR 1:170</td>
<td>134.440</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>78.545</td>
<td>105 KAR 1:160</td>
<td>134.500</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>105 KAR 1:200</td>
<td>134.580</td>
<td>103 KAR 3 050</td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:220</td>
<td>134.590</td>
<td>103 KAR 3 050</td>
<td></td>
</tr>
<tr>
<td>105 KAR 1:330</td>
<td>134.800</td>
<td>103 KAR 3 050</td>
<td></td>
</tr>
<tr>
<td>78.616</td>
<td>103 KAR 30.091</td>
<td>134.805</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>78.530</td>
<td>105 KAR 1:130</td>
<td>134 8'0</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>78.545</td>
<td>105 KAR 1:130</td>
<td>134 8'5</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>91A.080</td>
<td>806 KAR 2.091</td>
<td>134.820</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>91A.0810</td>
<td>806 KAR 2.092</td>
<td>134.825</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>116 995</td>
<td>31 KAR 4.140</td>
<td>134.630</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>117.079</td>
<td>31 KAR 4.140</td>
<td>135 0.0</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>117.085</td>
<td>31 KAR 4.140</td>
<td>135 0.05</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>117.995</td>
<td>31 KAR 4.140</td>
<td>135 0.60</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>119.285</td>
<td>31 KAR 4.140</td>
<td>136 0.20</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.020</td>
<td>103 KAR 3 020</td>
<td>136 0.020</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.030</td>
<td>103 KAR 3 020</td>
<td>136 0.040</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.041-131.081</td>
<td>103 KAR 3 020</td>
<td>136 0.060</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.081</td>
<td>103 KAR 3 020</td>
<td>136 0.690-136 660</td>
<td>103 KAR 3 020</td>
</tr>
<tr>
<td>131.110</td>
<td>103 KAR 3 020</td>
<td>136 0.090</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.130</td>
<td>103 KAR 3 020</td>
<td>136.15-136.180</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.140</td>
<td>103 KAR 3 020</td>
<td>136.181-136.187</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.155</td>
<td>103 KAR 3 020</td>
<td>136.1870</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.160</td>
<td>103 KAR 3 020</td>
<td>136.310</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.170</td>
<td>103 KAR 3 020</td>
<td>136.320</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.180</td>
<td>103 KAR 3 020</td>
<td>136.330</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.181</td>
<td>103 KAR 3 020</td>
<td>136.335</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.183</td>
<td>103 KAR 3 020</td>
<td>136.337</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.190</td>
<td>103 KAR 3 020</td>
<td>136.392</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.340</td>
<td>103 KAR 3 050</td>
<td>136.545</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.360</td>
<td>103 KAR 3 050</td>
<td>136.575</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>131.670-131.676</td>
<td>103 KAR 1:150</td>
<td>136.600-136.660</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.020</td>
<td>103 KAR 3 050</td>
<td>137.130</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.043</td>
<td>103 KAR 3 050</td>
<td>137.160</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.060-132.090</td>
<td>103 KAR 3 050</td>
<td>138 310</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.100-132.180</td>
<td>103 KAR 3 050</td>
<td>138 342</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.190</td>
<td>103 KAR 3 050</td>
<td>138 344-138 355</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.200</td>
<td>103 KAR 3 050</td>
<td>138 358</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.215</td>
<td>103 KAR 3 050</td>
<td>138 359</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.216</td>
<td>103 KAR 3 050</td>
<td>138 380</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.220-132.270</td>
<td>103 KAR 3 050</td>
<td>138 380</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.230</td>
<td>103 KAR 3 050</td>
<td>138 385</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.240</td>
<td>103 KAR 3 050</td>
<td>138 390</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.250</td>
<td>103 KAR 3 050</td>
<td>138 395</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.260</td>
<td>103 KAR 3 050</td>
<td>138 400</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.270</td>
<td>103 KAR 3 050</td>
<td>138 405</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.310</td>
<td>103 KAR 3 050</td>
<td>138 405</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.320</td>
<td>103 KAR 3 050</td>
<td>138 420</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.340</td>
<td>103 KAR 3 050</td>
<td>138 52</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.450</td>
<td>103 KAR 3 050</td>
<td>138 530</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.470</td>
<td>103 KAR 3 050</td>
<td>138 580</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.500</td>
<td>103 KAR 3 050</td>
<td>138 580</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.510</td>
<td>103 KAR 3 050</td>
<td>138 680</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>132.520</td>
<td>103 KAR 3 050</td>
<td>138 680</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>133.045</td>
<td>103 KAR 3 050</td>
<td>139 070</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>133.100</td>
<td>103 KAR 3 050</td>
<td>139 095</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>133.240</td>
<td>103 KAR 3 050</td>
<td>139 170</td>
<td>103 KAR 3 050</td>
</tr>
<tr>
<td>134.020</td>
<td>103 KAR 3 050</td>
<td>103 KAR 31.200</td>
<td>103 KAR 3 020</td>
</tr>
<tr>
<td>134.390</td>
<td>103 KAR 3 050</td>
<td>139 135</td>
<td>103 KAR 3 020</td>
</tr>
<tr>
<td>134.420</td>
<td>103 KAR 3 050</td>
<td>139 210</td>
<td>103 KAR 3 020</td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td>KRS SECTION</td>
<td>REGULATION</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>139.230</td>
<td>103 KAR 3.020</td>
<td>146 410-416 535</td>
<td>401 KAR 10.031</td>
</tr>
<tr>
<td>139.240</td>
<td>103 KAR 3.020</td>
<td>103 KAR 3.020</td>
<td>401 KAR 10.001</td>
</tr>
<tr>
<td>139.250</td>
<td>103 KAR 3.020</td>
<td>103 KAR 3.020</td>
<td>401 KAR 10.026</td>
</tr>
<tr>
<td>139.260</td>
<td>103 KAR 3.020</td>
<td>103 KAR 3.020</td>
<td>401 KAR 10.029</td>
</tr>
<tr>
<td></td>
<td>103 KAR 30.091</td>
<td></td>
<td>401 KAR 10.030</td>
</tr>
<tr>
<td>139.270</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.031</td>
</tr>
<tr>
<td>139.470</td>
<td>103 KAR 3.020</td>
<td>146.550-146.570</td>
<td>401 KAR 10.001</td>
</tr>
<tr>
<td>139.480</td>
<td>103 KAR 3.020</td>
<td>103 KAR 30.091</td>
<td>401 KAR 10.026</td>
</tr>
<tr>
<td></td>
<td>103 KAR 3.020</td>
<td>103 KAR 30.091</td>
<td>401 KAR 10.029</td>
</tr>
<tr>
<td>139.483</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.031</td>
</tr>
<tr>
<td>139.495</td>
<td>103 KAR 3.020</td>
<td>146.600-146.619</td>
<td>401 KAR 10.001</td>
</tr>
<tr>
<td>139.497</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.026</td>
</tr>
<tr>
<td>139.515</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.029</td>
</tr>
<tr>
<td>139.517</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.030</td>
</tr>
<tr>
<td>139.518</td>
<td>103 KAR 31.200</td>
<td></td>
<td>401 KAR 10.031</td>
</tr>
<tr>
<td>139.5382</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.001</td>
</tr>
<tr>
<td>139.550</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.026</td>
</tr>
<tr>
<td>139.570</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.029</td>
</tr>
<tr>
<td>139.590</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.030</td>
</tr>
<tr>
<td>139.620</td>
<td>103 KAR 3.020</td>
<td></td>
<td>401 KAR 10.031</td>
</tr>
<tr>
<td>139.497</td>
<td>103 KAR 3.020</td>
<td>150.013</td>
<td>301 KAR 1:125</td>
</tr>
<tr>
<td>139.515</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 1:201</td>
</tr>
<tr>
<td>139.517</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 2:082</td>
</tr>
<tr>
<td>139.5382</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 2:132</td>
</tr>
<tr>
<td>139.550</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 2:227</td>
</tr>
<tr>
<td>139.570</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 2:300</td>
</tr>
<tr>
<td>139.590</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 4:370</td>
</tr>
<tr>
<td>139.770</td>
<td>103 KAR 3.020</td>
<td></td>
<td>301 KAR 1:410</td>
</tr>
<tr>
<td>139.778</td>
<td>103 KAR 3.020</td>
<td>150.015</td>
<td>301 KAR 2:015</td>
</tr>
<tr>
<td>140.010</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:082</td>
</tr>
<tr>
<td>140.060</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:227</td>
</tr>
<tr>
<td>140.080</td>
<td>103 KAR 3.050</td>
<td>150.025</td>
<td>301 KAR 1:125</td>
</tr>
<tr>
<td>140.100</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 1:410</td>
</tr>
<tr>
<td>140.130</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:083</td>
</tr>
<tr>
<td>140.160</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 4:110</td>
</tr>
<tr>
<td>140.190</td>
<td>103 KAR 3.050</td>
<td>150.073</td>
<td>301 KAR 1:201</td>
</tr>
<tr>
<td>140.222</td>
<td>103 KAR 3.050</td>
<td>150.092</td>
<td>301 KAR 2:30</td>
</tr>
<tr>
<td>140.300-140.360</td>
<td>103 KAR 3.050</td>
<td>150.129</td>
<td>301 KAR 1:410</td>
</tr>
<tr>
<td>140.350</td>
<td>103 KAR 3.050</td>
<td>150.179</td>
<td>301 KAR 1:125</td>
</tr>
<tr>
<td>140.510</td>
<td>103 KAR 3.050</td>
<td>150.191</td>
<td>301 KAR 1:410</td>
</tr>
<tr>
<td>142.050</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:090</td>
</tr>
<tr>
<td>142.321</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:176</td>
</tr>
<tr>
<td>142.327</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:227</td>
</tr>
<tr>
<td>142.357</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:251</td>
</tr>
<tr>
<td>143.030</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:300</td>
</tr>
<tr>
<td>143.037-143.040</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 4:070</td>
</tr>
<tr>
<td>143.050</td>
<td>103 KAR 3.050</td>
<td>150.175</td>
<td>301 KAR 1:201</td>
</tr>
<tr>
<td>143.060</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 1:410</td>
</tr>
<tr>
<td>143.085</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:030</td>
</tr>
<tr>
<td>143.990</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:176</td>
</tr>
<tr>
<td>143A.010</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:227</td>
</tr>
<tr>
<td>143A.030</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:300</td>
</tr>
<tr>
<td>143A.035</td>
<td>103 KAR 3.050</td>
<td>150.190</td>
<td>301 KAR 1:125</td>
</tr>
<tr>
<td>143A.037</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:132</td>
</tr>
<tr>
<td>143A.050</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:251</td>
</tr>
<tr>
<td>143A.090</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:300</td>
</tr>
<tr>
<td>143A.100</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 4.070</td>
</tr>
<tr>
<td>143A.991</td>
<td>103 KAR 3.050</td>
<td>150.195</td>
<td>301 KAR 4.070</td>
</tr>
<tr>
<td>144.52</td>
<td>401 KAR 34:005</td>
<td>150.235</td>
<td>301 KAR 1:125</td>
</tr>
<tr>
<td></td>
<td>401 KAR 35:005</td>
<td></td>
<td>301 KAR 1:410</td>
</tr>
<tr>
<td>144.120</td>
<td>103 KAR 3.050</td>
<td></td>
<td>301 KAR 2:227</td>
</tr>
<tr>
<td>144.132</td>
<td>103 KAR 3.020</td>
<td>150.240</td>
<td>301 KAR 2:227</td>
</tr>
<tr>
<td>146.200-146.360</td>
<td>401 KAR 10:001</td>
<td>150.280</td>
<td>301 KAR 2:083</td>
</tr>
<tr>
<td></td>
<td>401 KAR 10:026</td>
<td>150.293</td>
<td>301 KAR 2:083</td>
</tr>
<tr>
<td></td>
<td>401 KAR 10:029</td>
<td>150.303</td>
<td>301 KAR 2:300</td>
</tr>
<tr>
<td></td>
<td>401 KAR 10:030</td>
<td>150.305</td>
<td>301 KAR 2:082</td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td>KRS SECTION</td>
<td>REGULATION</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------</td>
<td>-------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>150.320</td>
<td>301 KAR 2.227</td>
<td>156.070</td>
<td>704 KAR 3.340</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.300</td>
<td>156.160</td>
<td>704 KAR 3.340</td>
</tr>
<tr>
<td>150.330</td>
<td>301 KAR 2.082</td>
<td>157.350</td>
<td>702 KAR 7.130</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.225</td>
<td>157.380</td>
<td>702 KAR 7.130</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.227</td>
<td>157.070</td>
<td>702 KAR 7.130</td>
</tr>
<tr>
<td></td>
<td>301 KAR 1:201</td>
<td>158.135</td>
<td>704 KAR 3.390</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.225</td>
<td>158.8451</td>
<td>703 KAR 5.070</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.227</td>
<td>158.6453</td>
<td>703 KAR 5.070</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.251</td>
<td>158.6455</td>
<td>703 KAR 5.060</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.300</td>
<td>158.6459</td>
<td>703 KAR 5.140</td>
</tr>
<tr>
<td></td>
<td>301 KAR 1:410</td>
<td>160.580</td>
<td>702 KAR 3.060</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.176</td>
<td>160.613-160.617</td>
<td>103 KAR 3.020</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.251</td>
<td>160.620</td>
<td>103 KAR 3.050</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.300</td>
<td>161.020</td>
<td>16 KAR 3.050</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.176</td>
<td>161.027</td>
<td>16 KAR 5.020</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.300</td>
<td>161.028</td>
<td>16 KAR 5.020</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.251</td>
<td>161.030</td>
<td>16 KAR 5.020</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.030</td>
<td>161.155</td>
<td>103 KAR 50.061</td>
</tr>
<tr>
<td></td>
<td>301 KAR 1:410</td>
<td>164.740</td>
<td>11 KAR 5.200</td>
</tr>
<tr>
<td></td>
<td>301 KAR 1:410</td>
<td>164.744</td>
<td>11 KAR 6.030</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.227</td>
<td>164.744</td>
<td>11 KAR 6.040</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.225</td>
<td>164.748</td>
<td>11 KAR 6.040</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.083</td>
<td>164.748</td>
<td>11 KAR 14.060</td>
</tr>
<tr>
<td></td>
<td>301 KAR 1:201</td>
<td>164.753</td>
<td>11 KAR 14.060</td>
</tr>
<tr>
<td></td>
<td>301 KAR 1:410</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.082</td>
<td>164.753</td>
<td>11 KAR 10.010</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.132</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.176</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.227</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.251</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2.300</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td></td>
<td>301 KAR 4.070</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>151B.125</td>
<td>785 KAR 1:010</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154A.130(4)</td>
<td>11 KAR 15.090</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.20-033</td>
<td>307 KAR 1:050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.20-066</td>
<td>103 KAR 3.020</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.22-050</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.22-060</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.22-070</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.23-070</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.23-010</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.24-110</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.24-110</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.24-130</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.26-090</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.28-090</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.34.010</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.45-090</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.45-100</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>154.45-110</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>155.170</td>
<td>103 KAR 3.050</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
<tr>
<td>156.010</td>
<td>702 KAR 3.080</td>
<td>164.753</td>
<td>11 KAR 15.090</td>
</tr>
</tbody>
</table>

E - 12
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>190.010-190.990</td>
<td>695 KAR 1:170</td>
<td>205.639</td>
<td>907 KAR 1:825</td>
</tr>
<tr>
<td>194A.025</td>
<td>906 KAR 1:170</td>
<td>205.640</td>
<td>907 KAR 1:825</td>
</tr>
<tr>
<td>194A.030</td>
<td>906 KAR 1:170</td>
<td>205.641</td>
<td>907 KAR 1:825</td>
</tr>
<tr>
<td>194A.050</td>
<td>906 KAR 1:170</td>
<td>205.950</td>
<td>910 KAR 1:160</td>
</tr>
<tr>
<td>194A.060</td>
<td>922 KAR 1:310</td>
<td>205.635</td>
<td>907 KAR 1:835</td>
</tr>
<tr>
<td>195.020</td>
<td>922 KAR 1:100</td>
<td>205.700</td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td>195.060</td>
<td>715 KAR 1:030</td>
<td>205.720</td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td>198B.090</td>
<td>501 KAR 6:270</td>
<td>205.705</td>
<td>921 KAR 1:380</td>
</tr>
<tr>
<td>198B.095</td>
<td>501 KAR 6:270</td>
<td>205.992</td>
<td>921 KAR 1:380</td>
</tr>
<tr>
<td>199.011</td>
<td>815 KAR 7:070</td>
<td>205.710-205.800</td>
<td>921 KAR 1:380</td>
</tr>
<tr>
<td>199.430</td>
<td>815 KAR 7:070</td>
<td>205.2001</td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td>199.470</td>
<td>815 KAR 7:070</td>
<td>205.2003</td>
<td>921 KAR 2:017</td>
</tr>
<tr>
<td>199.471</td>
<td>815 KAR 7:070</td>
<td>205.2005</td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td>199.472</td>
<td>815 KAR 7:070</td>
<td>205.5595</td>
<td>907 KAR 1:835</td>
</tr>
<tr>
<td>199.492</td>
<td>815 KAR 7:070</td>
<td>205.5606</td>
<td>907 KAR 1:835</td>
</tr>
<tr>
<td>199.493</td>
<td>815 KAR 7:070</td>
<td>205.5607</td>
<td>907 KAR 1:835</td>
</tr>
<tr>
<td>199.500</td>
<td>815 KAR 7:070</td>
<td>205.8451</td>
<td>907 KAR 1:026</td>
</tr>
<tr>
<td>199.502</td>
<td>815 KAR 7:070</td>
<td>205.8453</td>
<td>906 KAR 1:170</td>
</tr>
<tr>
<td>199.510</td>
<td>815 KAR 7:070</td>
<td>209.160</td>
<td>103 KAR 3:050</td>
</tr>
<tr>
<td>199.520</td>
<td>815 KAR 7:070</td>
<td>211.190</td>
<td>902 KAR 45:150</td>
</tr>
<tr>
<td>199.525</td>
<td>815 KAR 7:070</td>
<td>211.210</td>
<td>902 KAR 45:150</td>
</tr>
<tr>
<td>199.555</td>
<td>815 KAR 7:070</td>
<td>212.990</td>
<td>902 KAR 45:150</td>
</tr>
<tr>
<td>199.557</td>
<td>815 KAR 7:070</td>
<td>213.046</td>
<td>921 KAR 1:380</td>
</tr>
<tr>
<td>199.565</td>
<td>815 KAR 7:070</td>
<td>216.300</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>199.570</td>
<td>815 KAR 7:070</td>
<td>216.390</td>
<td>907 KAR 1:015</td>
</tr>
<tr>
<td>199.572</td>
<td>815 KAR 7:070</td>
<td>218A.010</td>
<td>902 KAR 55:110</td>
</tr>
<tr>
<td>199.575</td>
<td>815 KAR 7:070</td>
<td>218A.240</td>
<td>902 KAR 55:110</td>
</tr>
<tr>
<td>202A.011</td>
<td>815 KAR 7:070</td>
<td>218A.1446</td>
<td>906 KAR 1:160</td>
</tr>
<tr>
<td>202B.010</td>
<td>815 KAR 7:070</td>
<td>222.211</td>
<td>10 KAR 7:010</td>
</tr>
<tr>
<td>205.010</td>
<td>921 KAR 2:066</td>
<td>222.400-223.460</td>
<td>401 KAR 6:005</td>
</tr>
<tr>
<td>205.200</td>
<td>921 KAR 2:006</td>
<td>223.99</td>
<td>401 KAR 6:320</td>
</tr>
<tr>
<td>205.210</td>
<td>921 KAR 2:016</td>
<td>2233.99</td>
<td>401 KAR 6:320</td>
</tr>
<tr>
<td>205.211</td>
<td>921 KAR 2:016</td>
<td>224.01-010</td>
<td>200 KAR 17:090</td>
</tr>
<tr>
<td>205.380</td>
<td>921 KAR 2:017</td>
<td>224.040</td>
<td>200 KAR 17:090</td>
</tr>
<tr>
<td>205.510</td>
<td>921 KAR 2:017</td>
<td>224.050</td>
<td>200 KAR 17:090</td>
</tr>
<tr>
<td>205.520</td>
<td>921 KAR 2:017</td>
<td>224.306</td>
<td>200 KAR 17:090</td>
</tr>
<tr>
<td>205.556</td>
<td>921 KAR 2:017</td>
<td>224 01</td>
<td>401 KAR 32:050</td>
</tr>
<tr>
<td>205.637</td>
<td>907 KAR 1:825</td>
<td>224.10-100</td>
<td>401 KAR 5:010</td>
</tr>
<tr>
<td>205.638</td>
<td>907 KAR 1:825</td>
<td>224.10-110</td>
<td>401 KAR 6:320</td>
</tr>
<tr>
<td>205.639</td>
<td>907 KAR 1:826</td>
<td>907 KAR 1:026</td>
<td>401 KAR 5:012</td>
</tr>
<tr>
<td>205.640</td>
<td>907 KAR 1:826</td>
<td>907 KAR 1:026</td>
<td>401 KAR 11:001</td>
</tr>
<tr>
<td>205.641</td>
<td>907 KAR 1:826</td>
<td>907 KAR 1:026</td>
<td>401 KAR 11:010</td>
</tr>
<tr>
<td>205.642</td>
<td>907 KAR 1:826</td>
<td>907 KAR 1:026</td>
<td>401 KAR 11:020</td>
</tr>
<tr>
<td>205.643</td>
<td>907 KAR 1:826</td>
<td>907 KAR 1:026</td>
<td>401 KAR 11:030</td>
</tr>
<tr>
<td>205.644</td>
<td>907 KAR 1:826</td>
<td>907 KAR 1:026</td>
<td>401 KAR 11:050</td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 11:060</td>
<td>224.23-110</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 52:081</td>
<td>401 KAR 50:066</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 6:320</td>
<td>401 KAR 60:021</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.10-410-224.470</td>
<td>224.23-120</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 52:081</td>
<td>401 KAR 50:052</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.20-100</td>
<td>401 KAR 5:029</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 52:081</td>
<td>401 KAR 5:031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.20-110</td>
<td>401 KAR 5:037</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 52:081</td>
<td>224.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.20-120</td>
<td>401 KAR 5:061</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:012</td>
<td>401 KAR 5:001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.40</td>
<td>401 KAR 10:026</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 32:050</td>
<td>401 KAR 10:030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 34:080</td>
<td>401 KAR 10:031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 35:080</td>
<td>401 KAR 10:060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 36:005</td>
<td>401 KAR 10:001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 38:005</td>
<td>401 KAR 10:029</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.46</td>
<td>401 KAR 10:030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 38:005</td>
<td>401 KAR 10:031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.60</td>
<td>401 KAR 10:001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>922 KAR 5:050</td>
<td>401 KAR 10:026</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.70-100</td>
<td>401 KAR 10:029</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:010</td>
<td>401 KAR 10:030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.70-110</td>
<td>401 KAR 10:031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:010</td>
<td>224.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.73-110</td>
<td>401 KAR 11:001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:012</td>
<td>227A.010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 11:010</td>
<td>815 KAR 35:060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 11:020</td>
<td>227A.040</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 11:030</td>
<td>815 KAR 35:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 11:050</td>
<td>227A.060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 11:060</td>
<td>815 KAR 35:060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 32:050</td>
<td>227A.100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.99</td>
<td>815 KAR 35:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 35:080</td>
<td>229.021</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 36:005</td>
<td>201 KAR 27:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.01-010</td>
<td>229.071</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:057</td>
<td>201 KAR 27:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:010</td>
<td>229.031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:001</td>
<td>201 KAR 27:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>229.101</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>201 KAR 27:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>229.131</td>
<td></td>
<td></td>
</tr>
<tr>
<td>103 KAR 3:050</td>
<td>201 KAR 27:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.01-160.617</td>
<td>229.171</td>
<td></td>
<td></td>
</tr>
<tr>
<td>922 KAR 3:050</td>
<td>201 KAR 27:100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.01-310</td>
<td>229.180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:001</td>
<td>230.210</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.01-400</td>
<td>201 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>610 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:028</td>
<td>810 KAR 1:012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>810 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>810 KAR 1:023</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>811 KAR 1:075</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:062</td>
<td>611 KAR 1:090</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.10-100</td>
<td>611 KAR 1:095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:010</td>
<td>811 KAR 1:070</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:020</td>
<td>611 KAR 1:095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>230.240</td>
<td>611 KAR 1:095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:020</td>
<td>810 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>230.260</td>
<td>810 KAR 1:012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:066</td>
<td>810 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 59:015</td>
<td>810 KAR 1:023</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 59:017</td>
<td>811 KAR 1:075</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 60:021</td>
<td>811 KAR 1:090</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 61:005</td>
<td>811 KAR 1:095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.16-050</td>
<td>401 KAR 9:020</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 5:062</td>
<td>230.265</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:010</td>
<td>810 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:020</td>
<td>810 KAR 1:023</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:001</td>
<td>811 KAR 1:090</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:010</td>
<td>811 KAR 1:095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>230.280</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>811 KAR 1:012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.16-070</td>
<td>401 KAR 10:030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>811 KAR 1:070</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 9:010</td>
<td>811 KAR 1:075</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>810 KAR 1:012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>810 KAR 1:018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>230.300</td>
<td>810 KAR 1:028</td>
<td></td>
<td></td>
</tr>
<tr>
<td>224.20-100</td>
<td>811 KAR 1:070</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 50:086</td>
<td>811 KAR 1:075</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 60:021</td>
<td>811 KAR 1:095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>810 KAR 1:012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:075</td>
<td>304.2-210</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:095</td>
<td>304.2-210-304.2-290</td>
<td></td>
<td></td>
</tr>
<tr>
<td>810 KAR 1:012</td>
<td>304.2-230</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:070</td>
<td>806 KAR 2:111</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:075</td>
<td>806 KAR 2:111</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:090</td>
<td>806 KAR 17:290</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:095</td>
<td>806 KAR 17:290</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:090</td>
<td>304.2-250</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:095</td>
<td>304.2-210</td>
<td></td>
<td></td>
</tr>
<tr>
<td>810 KAR 1:012</td>
<td>304.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>810 KAR 1:018</td>
<td>304.3-120</td>
<td></td>
<td></td>
</tr>
<tr>
<td>810 KAR 1:028</td>
<td>304.3-125</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:070</td>
<td>304.3-240</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:075</td>
<td>304.3-241</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:090</td>
<td>304.3-270</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:070</td>
<td>304.4-110</td>
<td></td>
<td></td>
</tr>
<tr>
<td>811 KAR 1:085</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>234.321</td>
<td>922 KAR 3:050</td>
<td></td>
<td></td>
</tr>
<tr>
<td>230.361</td>
<td>922 KAR 3:050</td>
<td></td>
<td></td>
</tr>
<tr>
<td>234.370</td>
<td>304.4-105</td>
<td></td>
<td></td>
</tr>
<tr>
<td>245.710</td>
<td>304.6-130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>245.720</td>
<td>304.6-140</td>
<td></td>
<td></td>
</tr>
<tr>
<td>245.730</td>
<td>304.6-170</td>
<td></td>
<td></td>
</tr>
<tr>
<td>245.850</td>
<td>304.6-171</td>
<td></td>
<td></td>
</tr>
<tr>
<td>248.723</td>
<td>304.6-180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>248.756</td>
<td>304.6-180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>247.920</td>
<td>304.6-180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>257.070</td>
<td>304.6-180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>260.10</td>
<td>304.6-180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>284.141</td>
<td>304.6-180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.1</td>
<td>304.9-105</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.2</td>
<td>304.9-130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.9</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.10</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.11</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.12</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>273.161</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.014</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.610</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.615</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.618</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.619</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.620</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.625</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.637</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.650</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281.860</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>281A.010</td>
<td>806 KAR 6:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>292.320</td>
<td>806 KAR 2:930</td>
<td></td>
<td></td>
</tr>
<tr>
<td>292.330</td>
<td>806 KAR 2:930</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.1-010</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.1-040</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.1-050</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.2-065</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.2-100</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.2-110(1)</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.2-140</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304.2-110</td>
<td>806 KAR 14:007</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

E - 15
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>304.15-342</td>
<td>806 KAR 5:130</td>
</tr>
<tr>
<td>304.14-642</td>
<td>806 KAR 9:220</td>
</tr>
<tr>
<td>304.15-700</td>
<td>806 KAR 9:220</td>
</tr>
<tr>
<td></td>
<td>806 KAR 9:340</td>
</tr>
<tr>
<td>304.17A-005</td>
<td>806 KAR 14:007</td>
</tr>
<tr>
<td>304.17A-095</td>
<td>806 KAR 14:007</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:005</td>
</tr>
<tr>
<td>304.17A-096</td>
<td>806 KAR 14:007</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:005</td>
</tr>
<tr>
<td>304.17A-600-304.17A-629</td>
<td>806 KAR 17:005</td>
</tr>
<tr>
<td>304.17A-620</td>
<td>806 KAR 3:170</td>
</tr>
<tr>
<td>304.17-030</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17-042</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17-310</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17-313</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17-319</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17-412</td>
<td>806 KAR 17:250</td>
</tr>
<tr>
<td>304.17-3185</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-005</td>
<td>806 KAR 17:310</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:370</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-690</td>
<td>806 KAR 17:180</td>
</tr>
<tr>
<td>304.17A-695-304.17A-694</td>
<td>806 KAR 17:555</td>
</tr>
<tr>
<td>304.17A-696-304.17A-132</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-132-304.17A-145</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-148-304.17A-149</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-150</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-155</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-171</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-250</td>
<td>806 KAR 17:310</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-258</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-500</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-520</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-527</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-530</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-532</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-575</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-577</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-578</td>
<td>806 KAR 17:300</td>
</tr>
<tr>
<td>304.17A-660</td>
<td>806 KAR 17:290</td>
</tr>
<tr>
<td>304.17A-660-304.17A-619</td>
<td>806 KAR 17:290</td>
</tr>
<tr>
<td>304.17A-621-304.17A-631</td>
<td>806 KAR 17:290</td>
</tr>
<tr>
<td>304.17A-623</td>
<td>806 KAR 17:280</td>
</tr>
<tr>
<td>304.17A-647</td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td>304.17A-700</td>
<td>806 KAR 17:290</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:310</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:370</td>
</tr>
<tr>
<td>304.17A-702</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17A-704</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17A-706</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17A-708</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17A-720</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17A-728</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17A-730</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17C-010</td>
<td>806 KAR 17:290</td>
</tr>
<tr>
<td>304.17C-030</td>
<td>806 KAR 17:280</td>
</tr>
<tr>
<td>304.17C-90</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td>304.17C-010</td>
<td>806 KAR 17:370</td>
</tr>
<tr>
<td>304.17C-010-304.17C-090</td>
<td>806 KAR 17:310</td>
</tr>
<tr>
<td>304.17C-090</td>
<td>806 KAR 17:370</td>
</tr>
<tr>
<td>304.18-032</td>
<td>806 KAR 17:360</td>
</tr>
<tr>
<td></td>
<td>806 KAR 14:060</td>
</tr>
<tr>
<td>304.18-035</td>
<td>806 KAR 14:060</td>
</tr>
<tr>
<td>304.18-037</td>
<td>806 KAR 14:060</td>
</tr>
<tr>
<td></td>
<td>304.18-035-304.18-037</td>
</tr>
<tr>
<td></td>
<td>304.32-147</td>
</tr>
<tr>
<td></td>
<td>304.32-153</td>
</tr>
<tr>
<td></td>
<td>304.32-154</td>
</tr>
<tr>
<td></td>
<td>304.32-156</td>
</tr>
<tr>
<td></td>
<td>304.33-193</td>
</tr>
<tr>
<td></td>
<td>304.33-195</td>
</tr>
<tr>
<td></td>
<td>304.33-196</td>
</tr>
<tr>
<td></td>
<td>304.33-199</td>
</tr>
<tr>
<td></td>
<td>304.33-210</td>
</tr>
<tr>
<td></td>
<td>304.33-225</td>
</tr>
<tr>
<td></td>
<td>304.33-1935-304.38-1937</td>
</tr>
<tr>
<td></td>
<td>304.33-1937</td>
</tr>
<tr>
<td></td>
<td>304.33-1955</td>
</tr>
<tr>
<td></td>
<td>304.33-101-304.39-340</td>
</tr>
<tr>
<td></td>
<td>304.42-140</td>
</tr>
<tr>
<td></td>
<td>304.43-110</td>
</tr>
<tr>
<td></td>
<td>304.43-080</td>
</tr>
<tr>
<td></td>
<td>304.43-075</td>
</tr>
<tr>
<td></td>
<td>304.99</td>
</tr>
<tr>
<td></td>
<td>304.99-123</td>
</tr>
<tr>
<td></td>
<td>309.083</td>
</tr>
<tr>
<td></td>
<td>309.084</td>
</tr>
<tr>
<td></td>
<td>309.085</td>
</tr>
<tr>
<td></td>
<td>309.086</td>
</tr>
<tr>
<td></td>
<td>309.0813</td>
</tr>
<tr>
<td></td>
<td>311A.010</td>
</tr>
<tr>
<td></td>
<td>311A.025</td>
</tr>
<tr>
<td></td>
<td>311A.027</td>
</tr>
<tr>
<td></td>
<td>311A.030</td>
</tr>
<tr>
<td></td>
<td>311A.050</td>
</tr>
<tr>
<td></td>
<td>311A.055</td>
</tr>
<tr>
<td></td>
<td>311A.060</td>
</tr>
<tr>
<td></td>
<td>311A.065</td>
</tr>
<tr>
<td></td>
<td>311A.075</td>
</tr>
<tr>
<td></td>
<td>311A.090</td>
</tr>
<tr>
<td></td>
<td>311A.095</td>
</tr>
<tr>
<td></td>
<td>311A.100</td>
</tr>
<tr>
<td></td>
<td>311A.110</td>
</tr>
<tr>
<td></td>
<td>311A.145</td>
</tr>
<tr>
<td></td>
<td>311A.190</td>
</tr>
<tr>
<td></td>
<td>311.597</td>
</tr>
<tr>
<td></td>
<td>311.720</td>
</tr>
<tr>
<td></td>
<td>311.840</td>
</tr>
<tr>
<td></td>
<td>312.085</td>
</tr>
<tr>
<td></td>
<td>312.095</td>
</tr>
<tr>
<td></td>
<td>312.145</td>
</tr>
<tr>
<td></td>
<td>312.175</td>
</tr>
</tbody>
</table>

E - 16
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>314.91</td>
<td>922 KAR 1.310</td>
<td>342.035</td>
<td>803 KAR 25:091</td>
</tr>
<tr>
<td>314.131</td>
<td>201 KAR 20.410</td>
<td>342.260</td>
<td>803 KAR 25:091</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17.005</td>
<td>344.030</td>
<td>105 KAR 1:210</td>
</tr>
<tr>
<td>315.010</td>
<td>201 KAR 2:105</td>
<td>350.060</td>
<td>401 KAR 5:010</td>
</tr>
<tr>
<td>315.402</td>
<td>201 KAR 2:105</td>
<td>351.010</td>
<td>805 KAR 8:600</td>
</tr>
<tr>
<td>315.406</td>
<td>201 KAR 2:105</td>
<td>351.175</td>
<td>222 KAR 3:050</td>
</tr>
<tr>
<td>317.410</td>
<td>201 KAR 14:150</td>
<td>351.19:4</td>
<td>805 KAR 8:600</td>
</tr>
<tr>
<td>317.450</td>
<td>201 KAR 14:150</td>
<td>351.10:4</td>
<td>805 KAR 8:600</td>
</tr>
<tr>
<td>319A.160</td>
<td>201 KAR 28:090</td>
<td>352.010-352.550</td>
<td>805 KAR 8:600</td>
</tr>
<tr>
<td>322.010</td>
<td>401 KAR 34:005</td>
<td>363.700</td>
<td>302 KAR 76:11E</td>
</tr>
<tr>
<td></td>
<td>401 KAR 35:005</td>
<td>365.700</td>
<td>300 KAR 6:020</td>
</tr>
<tr>
<td></td>
<td>201 KAR 18:072</td>
<td>363.900-363.908</td>
<td>302 KAR 76:11E</td>
</tr>
<tr>
<td>322.040</td>
<td>360.107</td>
<td>31 KAR 4:140</td>
<td></td>
</tr>
<tr>
<td>322.045</td>
<td>395.470</td>
<td>922 KAR 3:050</td>
<td></td>
</tr>
<tr>
<td>322.047</td>
<td>400.203</td>
<td>907 KAR 1:015</td>
<td></td>
</tr>
<tr>
<td>322.290</td>
<td>405.430</td>
<td>921 KAR 1:380</td>
<td></td>
</tr>
<tr>
<td>322A.060</td>
<td>405.520</td>
<td>921 KAR 1:380</td>
<td></td>
</tr>
<tr>
<td>323A.100</td>
<td>406.021</td>
<td>921 KAR 1:380</td>
<td></td>
</tr>
<tr>
<td>324A.010</td>
<td>406.025</td>
<td>921 KAR 1:380</td>
<td></td>
</tr>
<tr>
<td>324A.030</td>
<td>407.510-407.5902</td>
<td>921 KAR 1:380</td>
<td></td>
</tr>
<tr>
<td>324A.035</td>
<td>413.120</td>
<td>922 KAR 3:050</td>
<td></td>
</tr>
<tr>
<td>324A.052</td>
<td>439</td>
<td>502 KAR 8:270</td>
<td></td>
</tr>
<tr>
<td>325.282</td>
<td>4951-4860</td>
<td>921 KAR 2:020</td>
<td></td>
</tr>
<tr>
<td>325.301</td>
<td>503.110</td>
<td>921 KAR 3:100</td>
<td></td>
</tr>
<tr>
<td>329A.025</td>
<td>527.100</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>329A.035</td>
<td>527.110</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>329A.040</td>
<td>600.020</td>
<td>922 KAR 1:050</td>
<td></td>
</tr>
<tr>
<td>329A.045</td>
<td>803 KAR 2:307</td>
<td>610.170</td>
<td>922 KAR 3:380</td>
</tr>
<tr>
<td>325.330</td>
<td>803 KAR 2:300</td>
<td>615.010-615.990</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>334A.033</td>
<td>803 KAR 2:305</td>
<td>620.020</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>334A.050</td>
<td>803 KAR 2:306</td>
<td>620.030</td>
<td>922 KAR 1:000</td>
</tr>
<tr>
<td>334A.160</td>
<td>803 KAR 2:307</td>
<td>620.090</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>334A.181</td>
<td>803 KAR 2:308</td>
<td>510.125</td>
<td>922 KAR 1:010</td>
</tr>
<tr>
<td>334A.183</td>
<td>803 KAR 2:309</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>334A.185</td>
<td>803 KAR 2:310</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>334.050</td>
<td>803 KAR 2:311</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>334.060</td>
<td>803 KAR 2:312</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>334.090</td>
<td>803 KAR 2:313</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>334.110</td>
<td>803 KAR 2:314</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>338</td>
<td>803 KAR 2:315</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>338.051</td>
<td>803 KAR 2:316</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>338.061</td>
<td>803 KAR 2:317</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>338.121</td>
<td>803 KAR 2:300</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>338.161</td>
<td>803 KAR 2:301</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>341.415</td>
<td>803 KAR 2:302</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>341.420</td>
<td>803 KAR 2:303</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>341.430</td>
<td>803 KAR 2:304</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>341.440</td>
<td>803 KAR 2:305</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>341.450</td>
<td>803 KAR 2:306</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>342.019</td>
<td>803 KAR 25:089</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
<tr>
<td>342.020</td>
<td>803 KAR 25:089</td>
<td>922 KAR 1:360</td>
<td></td>
</tr>
</tbody>
</table>

E - 17
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 C.F.R.</td>
<td>401 KAR 50.066</td>
<td>29 U.S.C</td>
<td>806 KAR 17.500</td>
</tr>
<tr>
<td></td>
<td>603 KAR 3:080</td>
<td></td>
<td>921 KAR 3:020</td>
</tr>
<tr>
<td></td>
<td>105 KAR 1:390</td>
<td></td>
<td>401 KAR 5:052</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:180</td>
<td></td>
<td>401 KAR 5:077</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:305</td>
<td></td>
<td>401 KAR 5:077</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:306</td>
<td></td>
<td>401 KAR 9:010</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:307</td>
<td></td>
<td>401 KAR 9:020</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:309</td>
<td></td>
<td>401 KAR 38:005</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:316</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>803 KAR 2:317</td>
<td></td>
<td>921 KAR 3:020</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:500</td>
<td></td>
<td>921 KAR 3:020</td>
</tr>
<tr>
<td>34 C.F.R.</td>
<td>31 KAR 4:140</td>
<td>42 U.S.C.</td>
<td>31 KAR 4:140</td>
</tr>
<tr>
<td></td>
<td>401 KAR 10:029</td>
<td></td>
<td>105 KAR 1:210</td>
</tr>
<tr>
<td></td>
<td>11 KAR 3:100</td>
<td></td>
<td>401 KAR 5:057</td>
</tr>
<tr>
<td></td>
<td>11 KAR 18:010</td>
<td></td>
<td>401 KAR 38:005</td>
</tr>
<tr>
<td>40 C.F.R.</td>
<td>401 KAR 5:057</td>
<td></td>
<td>401 KAR 5:066</td>
</tr>
<tr>
<td></td>
<td>401 KAR 32:050</td>
<td></td>
<td>401 KAR 52:081</td>
</tr>
<tr>
<td></td>
<td>401 KAR 35:080</td>
<td></td>
<td>401 KAR 60:021</td>
</tr>
<tr>
<td></td>
<td>401 KAR 37:005</td>
<td></td>
<td>806 KAR 17:500</td>
</tr>
<tr>
<td></td>
<td>401 KAR 38:005</td>
<td></td>
<td>806 KAR 17:555</td>
</tr>
<tr>
<td></td>
<td>401 KAR 10:001</td>
<td></td>
<td>907 KAR 1:015</td>
</tr>
<tr>
<td>42 C.F.R.</td>
<td>401 KAR 10:029</td>
<td></td>
<td>907 KAR 1:026</td>
</tr>
<tr>
<td></td>
<td>401 KAR 50:066</td>
<td></td>
<td>907 KAR 1:026</td>
</tr>
<tr>
<td></td>
<td>401 KAR 59:015</td>
<td></td>
<td>907 KAR 1:025</td>
</tr>
<tr>
<td></td>
<td>401 KAR 59:017</td>
<td></td>
<td>907 KAR 1:025</td>
</tr>
<tr>
<td></td>
<td>401 KAR 61:005</td>
<td></td>
<td>907 KAR 1:025</td>
</tr>
<tr>
<td></td>
<td>401 KAR 60:021</td>
<td></td>
<td>907 KAR 1:025</td>
</tr>
<tr>
<td>45 C.F.R.</td>
<td>502 KAR 32.010</td>
<td></td>
<td>907 KAR 3:205</td>
</tr>
<tr>
<td></td>
<td>806 KAR 17:370</td>
<td></td>
<td>921 KAR 1:380</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:015</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:015</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:825</td>
<td></td>
<td>921 KAR 2:017</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:835</td>
<td></td>
<td>921 KAR 2:370</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:310</td>
<td></td>
<td>921 KAR 3:020</td>
</tr>
<tr>
<td></td>
<td>921 KAR 1:380</td>
<td></td>
<td>922 KAR 1:060</td>
</tr>
<tr>
<td>49 C.F.R.</td>
<td>921 KAR 2:006</td>
<td></td>
<td>922 KAR 1:100</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:370</td>
<td></td>
<td>922 KAR 1:140</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:060</td>
<td></td>
<td>922 KAR 1:140</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:100</td>
<td></td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td></td>
<td>401 KAR 50.066</td>
<td></td>
<td>922 KAR 1:360</td>
</tr>
<tr>
<td></td>
<td>45 C.F.R.</td>
<td>921 KAR 2:016</td>
<td>922 KAR 2:017</td>
</tr>
<tr>
<td></td>
<td>45 C.F.R.</td>
<td>922 KAR 2:017</td>
<td>922 KAR 1:140</td>
</tr>
<tr>
<td>50 C.F.R.</td>
<td>401 KAR 43.005</td>
<td></td>
<td>921 KAR 50:066</td>
</tr>
<tr>
<td></td>
<td>301 KAR 2:227</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 3:020</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>201 KAR 30:010</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td>10 U.S.C.</td>
<td>806 KAR 3:170</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>11 KAR 3:100</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:006</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td>23 U.S.C.</td>
<td>401 KAR 50.066</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>603 KAR 3:080</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td>25 U.S.C.</td>
<td>922 KAR 1:100</td>
<td></td>
<td>922 KAR 1:140</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:140</td>
<td></td>
<td>921 K:017</td>
</tr>
<tr>
<td>26 U.S.C.</td>
<td>105 KAR 1:140</td>
<td></td>
<td>105 KAR 1:140</td>
</tr>
<tr>
<td></td>
<td>105 KAR 1:270</td>
<td></td>
<td>105 KAR 1:270</td>
</tr>
<tr>
<td></td>
<td>105 KAR 1:330</td>
<td></td>
<td>105 KAR 1:330</td>
</tr>
<tr>
<td></td>
<td>105 KAR 1:345</td>
<td></td>
<td>105 KAR 1:345</td>
</tr>
<tr>
<td></td>
<td>105 KAR 1:350</td>
<td></td>
<td>105 KAR 1:350</td>
</tr>
</tbody>
</table>
The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2008 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(3) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>201 KAR 1:054</td>
<td>10-10-08</td>
</tr>
<tr>
<td>805 KAR 12:092</td>
<td>10-9-08</td>
</tr>
<tr>
<td>805 KAR 17:230</td>
<td>10-9-08</td>
</tr>
</tbody>
</table>
SUBJECT INDEX

ACCOUNTANCY, BOARD OF
   Peer reviews; 201 KAR 1:160
   Repeal of 201 KAR 1:170; 201 KAR 1:171

ALCOHOL AND DRUG COUNSELORS, BOARD OF
   CERTIFICATION OF
      Fees; 201 KAR 35:020
      Continuing education requirements; 201 KAR 35:040
      Curriculum of study; 201 KAR 35:050
      Complaint procedure; 201 KAR 35:060
      Supervision and work experience; 201 KAR 35:070
      Voluntary Inactive Status; 201 KAR 35:000

AGRICULTURE, DEPARTMENT OF
   Livestock Sanitation
      Treatment of imported mares; 302 KAR 20:110
      Treatment of imported stallions; 302 KAR 20:120
   Regulation and Inspection; Motor Fuel
      Testing and inspection program; 302 KAR 79:110
      Temporary suspension for retail fuel dispensers; 302 KAR 76:110E

AIR QUALITY, DIVISION FOR
   Existing Source Standards
      General provisions; 401 KAR 61:005
      General Administrative Procedures
         Conformity of transportation plans, programs and projects; 401
         KAR 50:066
   New Source Standards
      New indirect heat exchangers; 401 KAR 59:015
      Repeal of 401 KAR 59:016, 401 KAR 59:017
   New Source Performance Standards
      Repeal of 401 KAR 60:020, 401 KAR 60:021
      Permits, Registrations, and Prohibitory Rules
      Repeal of 401 KAR 52:080, 401 KAR 52:081

AUDITS AND INVESTIGATIONS, DIVISION OF
   Administration
      Administrative subpoenas; 906 KAR 1:170
      Monitoring system for products containing ephedrine, pseudoephede
      nine, or phenylpropanolamine; 906 KAR 1:160
      Repeal of 906 KAR 1:010; 906 KAR 1:011
      Repeal of 906 KAR 1:030; 906 KAR 1:031

BARBERING, BOARD OF
   School Records, 201 KAR 14.150

CHILD SUPPORT ENFORCEMENT
   Child Support
      Child support enforcement program application and interstate process;
      921 KAR 1:380

CHIROPRACTIC EXAMINERS, BOARD OF
   Licensing; standards, fees; 201 KAR 21.041

COMMUNITY BASED SERVICES, DEPARTMENT FOR
   Child Welfare
      Federal Title IV-E; 922 KAR 1:060
      Foster care and adoption permanency services; 922 KAR 1:140
      Private child care placement, levels of care, and payment; 922
      KAR 1:360
      Public agency adoptions; 922 KAR 1:100
      Standards for child-placing agencies; 922 KAR 1:310
      State-funded adoption assistance; 922 KAR 1 050
   Food Stamp Program
      Financial requirements; 921 KAR 3:020
      Issuance procedures; 921 KAR 3:045
      K-TAP, Kentucky Works, Welfare to Work, State Supplementation
      Technical requirements for Kentucky works; 921 KAR 2:370
      Technical requirements for the Kentucky transitional assistance
      program (K-TAP), 921 KAR 2:006
      Kentucky works supportive services; 921 KAR 2 017
      Day Care
      Repeal of 922 KAR 1:030 Selection and approval of adoptive parents
      Standards for need and amount for the Kentucky Transitional
      Assistance Program (K-TAP); 921 KAR 2 016

CORRECTIONS, DEPARTMENT OF
   Secretary Office of the
      Comprehensive sex offender presentence evaluation procedure;
      501 KAR 6:200
      Probation and parole policies and procedures; 501 KAR 6:270

CRIMINAL JUSTICETRAINING, DEPARTMENT OF
   Kentucky Law Enforcement Council
      Department of criminal justice training; graduation require-
      ments; records; 503 KAR 1:110

DRUG CONTROL POLICY, OFFICE OF
   Kentucky Agency for Substance Abuse Policy
      Kentucky agency for substance abuse policy (KY-ASAP) pro-
      gram and start-up funding; 10 KAR 7:010
      Kentucky agency for substance abuse policy on-going funding;
      10 KAR 7:020

ECONOMIC DEVELOPMENT, CABINET FOR
   Kentucky Economic Development Finance Authority
      Application process for Tax Increment Financing; 307 KAR
      1:050

EDUCATION CABINET: DEPARTMENT OF EDUCATION
   Assessment and Accountability
      Administration Code for Kentucky's Educational Assessment
      Program; 703 KAR 5:080
      Procedures for the inclusion of special populations in the state-
      required assessment and accountability; 703 KAR 5:070
   Office of Instruction
      Commonwealth Diploma Program; 704 KAR 3:340
      Postsecondary Education, Council on; 785 KAR Chapter 1 (See
      Postsecondary Education, Council on)
   School Administration and Finance
      Fidelity bond, penal sum for treasurer, finance office and others;
      702 KAR 3 080
   School Terms, Attendance and Operation
      Approval of innovative alternative school calendars; 702 KAR
      7:130

EDUCATION AND WORKFORCE DEVELOPEMENT CABINET
   Education, Department of; KAR Titles 702-704 (See Education, De-
   partment of)
   Libraries and Archives; 725 KAR Chapter 1 (See Libraries and Arc-
   hes. Department for)
   Workforce Investment, Department for
      Appeals; 787 KAR 1:110
      Confidentiality of records of the Office of Employment and
      Training; 787 KAR 2:020
      Recoupment and recovery; 787 KAR 1:190

EDUCATION PROFESSIONAL STANDARDS BOARD
   Administrative Certificates
      Professional certificates for instructional leadership - school prin-
SUBJECT INDEX

Educator Preparation
  Standards for admission to educator preparation; 16 KAR 5:020

ELECTIONS, KENTUCKY STATE BOARD OF
  Forms and Procedures
    Submitting a Federal Post Card Application and absentee ballot request electronically; 31 KAR 4:140

EMERGENCY MEDICAL SERVICE, BOARD OF
  Requirements for examination, certification and recertification of the advanced emergency medical technician; 222 KAR 7.330

ENERGY AND ENVIRONMENT CABINET
  Compliance Assistance, Division of
    Board of certification; 401 KAR 11:010
    Certification fees; 401 KAR 11:060
    Definitions for 401 Chapter 11; 401 KAR 11:001
    Operator Certification; 401 KAR 11:050
    Standards of professional conduct for certified operators; 401 KAR 11:020
    Wastewater treatment and collection operators-classification and qualifications; 401 KAR 11:030
  Environmental Protection, Department of
    Air Quality, Division for
      401 KAR Chapters 50, 59, and 61 (See Air Quality, Division for)
    Water, Division for; 401 KAR Chapters 5, 9-10 (See Water, Division for)
    Waste Management, Division for 401 KAR Chapters 11, and 32-43 (See Waste Management, Division for)
  Natural Resources, Department for
    Mine Safety and Licensing, Office of; 805 KAR Chapter 8 (See Mine Safety and Licensing, Office of)

FINANCE AND ADMINISTRATION CABINET
  Retirement Systems, Kentucky; KAR Title 105 (See Kentucky Retirement Systems)
  Revenue, Department of, KAR Title 103 (See Revenue, Department of)
  Purchasing
    Registration to collect Kentucky sales and use tax; 200 KAR 5:390

FINANCIAL INSTITUTIONS, DEPARTMENT OF
  Securities
    Examples of dishonest or unethical practice for broker-dealers and agents; 808 KAR 10:440
    Examples of dishonest or unethical practice for investment advisors and investment advisor representative; 808 KAR 10:450
    Repeal of 808 KAR 10:040; 808 KAR 10 041
  Use of senior certifications and designations; 808 KAR 10:042

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
  Fish
    Recreational fishing limits; 301 KAR 1:201
    Taking of fish by other than traditional fishing methods; 301 KAR 1:410
    Transportation of fish; 301 KAR 1:125
  Game
    Black bears; 301 KAR 2:300
    Commercial guide license; 301 KAR 2:030
    Deer control tags and destruction permits; 301 KAR 2:176
    Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 2:225
    Elk, depredation permits, landowner cooperators permits, and hunts; 301 KAR 2:132
    Feeding of wildlife; 301 KAR 2:015
  Holding and intrastate transportation of captive cervids; 301 KAR 2:083
  Hunting and trapping seasons and limits for furbearers; 301 KAR 2:251
  Repel of 301 KAR 2.223, 301 KAR 2:227
  Scientific and educational collecting permits; 301 KAR 4:070
  Transportation and holding of exotic wildlife; 301 KAR 2:082
  Wildlife
    Administration of drugs to wildlife; 301 KAR 4:110

GENERAL GOVERNMENT CABINET
  Accountancy, Board of; 201 KAR Chapter 1 (See Accountancy, Board of)
  Alcohol and Drug Counselors, Board of; 201 KAR Chapter 35 (See Alcohol and Drug Counselors, Board of Certification of)
  Barbering, 201 KAR Chapter 14 (See Barbering, Board of)
  Chiropractic Examiners, 201 KAR Chapter 21 (See Chiropractic Examiners, Board of)
  Engineers and Land Surveyors, 201 KAR Chapter 18 (See Professional Engineers and Land Surveyors, Board of Licensure for)
  Hearing Instruments Specialists, Board of; 201 KAR Chapter 7 (See Hearing Instruments, Licensing Board of Specialists in)
  Kentucky Infrastructure Authority; 200 KAR Chapter 50 (See Kentucky Infrastructure Authority)
  Landscape Architects, Board of; 201 KAR Chapter 10 (See Landscape Architects, Board of Examiners and Registration of)
  Occupational Therapy, Board of Licensure for; 201 Chapter 28 (See Occupational Therapy, Board of Licensure for)
  Pharmacy, Kentucky Board of; 201 KAR Chapter 2 (Pharmacy, Board of)
  Private Investigators; Kentuck Board of Licensure for; 201 KAR Chapter 41 (See Private Investigators; Kentucky Board of Licensure for)
  Medical Licensure; 201 KAR Chapter 9 (See Medical Licensure, Kentucky Board of)
  Nursing, Board of; 201 KAR Chapter 20 (See Nursing, Board of)
  Real Estate Appraisers Board, 201 KAR Chapter 30 (See Real Estate Appraisers Board)
  Speech-Language Pathology and Audiology, Board of; 201 KAR Chapter 17

HEALTH AND FAMILY SERVICES, CABINET FOR
  Community Based Services; KAR Title 921 & 922 (See Community Based Services, Department for)
  Health Policy; KAR Title 900 and 902 (See Health Policy, Office of)
  Inspector General, Office of; KAR Title 906 (See Audits and Investigations, Division of)
  Income Support, Department for; KAR Title 921 (See Child Support Enforcement)
  Medicaid Services, KAR Title 907 (Medicaid Services, Department of)
  Public Health, Department for; Title 902 KAR Chapter 45 (See Public Health Protection and Safety, Division of)

HEALTH POLICY, OFFICE OF
  Certificate of Need
    Certificate of need expenditure minimums; 900 KAR 6:030
  Health Provider Surveillance Data
    Release of public data sets for health care discharge data; 902 KAR 19.030

HEARING INSTRUMENTS, LICENSING BOARD FOR
  SPECIALISTS IN
    Fees; 201 KAR 7.015

HIGHWAYS, DEPARTMENT OF
  Maintenance
    Advertising devices; 603 KAR 3:060

E - 22
SUBJECT INDEX

HOUSING, BUILDINGS AND CONSTRUCTION, DEPARTMENT OF
Electrical Inspectors
Electrical continuing education procedure; 815 KAR 35:100
Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060; 815 KAR 35:060
Kentucky Building Code
The Kentucky Certified Building Inspector Program; 815 KAR 7:070

INSURANCE, DEPARTMENT OF
Administration
Disclosure of Local Government Taxes; 806 KAR 2:092
Repeal of 806 KAR 2:090 and 2:096; 806 KAR 2:091
Repeal of 806 KAR 2:110; 806 KAR 2:111
Agents, Consultants, Solicitors, and Adjusters
Continuing: 806 KAR 5:220
Forms; 806 KAR 9:340
Recognition of financial planning certification and designation for receipt of fees and commissions; 806 KAR 9:350
Assets and Liabilities
Minimum Standards for Determining Reserve Liabilities and Nonforeseeable Liabilities; 806 KAR 6:130
Authorization of Insurers and General Requirements
Annual audited financial reports; 806 KAR 3:170
Health Insurance Contracts
Health insurance forms and reports
Basic health benefit plan requirements; 806 KAR 17:500
Health insurance forms and reports; 806 KAR 17:005
Registration, utilization review, and internal appeal; 806 KAR 17:280
ICARE Program high-cost conditions; 806 KAR 17:540
ICARE Program employer eligibility, application process, and requirements; 806 KAR 17:545
ICARE Program requirements; 806 KAR 17:555
Independent External Review Program; 806 KAR 17:290
Prompt payment of claims; 806 KAR 17:360
Prompt payment of claims reporting requirements; 806 KAR 17:310
Provider agreement and risk sharing agreement filing agreements; 806 KAR 17:300
Standardized health claim attachments; 806 KAR 17:370
Standard health benefit plan; 806 KAR 17:180
Insurance Contract
Group certificate filing; 806 KAR 14:060
Rate and form filing for health insurers; 806 KAR 14:007
Life Insurance and Annuity Contracts
Paid-up Life Insurance Policies; 806 KAR 15:080

JUSTICE AND PUBLIC SAFETY CABINET
Corrections, Department of, 501 KAR Chapter 6 (See Corrections, Department of)
Criminal Justice Training, Department of, 501 Chapter 3 (See Criminal Justice Training, Department of)
Drug Control Policy, Office of, 10 Chapter 7 (Drug Control Policy, Office of)
Kentucky Law Enforcement Council; 503 KAR Chapter 1 (See Kentucky Law Enforcement Council)
Kentucky State Police, Department of; KAR Title 52 (See Kentucky State Police, Department of)
Special Local Peace Officers
Definitions; 500 KAR 3:010
Filing and processing SLPO commissions; 500 KAR 3:020

KENTUCKY BOXING AND WRESTLING AUTHORITY
Athletic Commission
General requirements for amateur mixed martial arts shows; 201 KAR 27:100

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Kentucky Loan Program
Administrative wage garnishment; 11 KAR 3:100
KHEAA Grant Program
Go Higher Grant Program; 11 KAR 5:200
Teacher Scholarship Loan Program
Teacher scholarships; 11 KAR 5:030
Defeasance of teacher scholarship repayment; 11 KAR 8:040
Defeasance of Osteopathic Medicine Scholarship Program repayment; 11 KAR 14:080
Commonwealth Merit Scholarship Program
Kentucky Educational Excellence Scholarship (KEES) Program; 11 KAR 15:090
Robert C. Byrd Honors Scholarship Program; 11 KAR 18:010

KENTUCKY HORSE RACING AUTHORITY
Enforcement, Division of
Racing and track rules; 811 KAR 1:075
Harness Racing
Disciplinary measures and penalties; 811 KAR 1:095
Licensing standardsbred racing; 811 KAR 1:070
Medication; testing procedures; prohibited practices; 811 KAR 1:090
Thoroughbred Racing
Disciplinary measures and penalties; 810 KAR 1:028
Horses; 810 KAR 1:012
Licensing thoroughbred racing; 810 KAR 1:025
Medication; testing procedures; prohibited practices; 810 KAR 1:018

KENTUCKY INFRASTRUCTURE AUTHORITY
Guidelines Kentucky Infrastructure Authority grants from unobligated bond pool funds; 200 KAR 17:090

KENTUCKY LAW ENFORCEMENT COUNCIL
Career Development Program; 503 KAR 1:170

KENTUCKY RETIREMENT SYSTEMS
General Rules
Account established under 26 U.S.C.; 105 KAR 1:420
Annual disability review; 105 KAR 1:220
Contribution reporting; 105 KAR 1:140
Death after retirement procedures; 105 KAR 1:240
Death before retirement procedures; 105 KAR 1:180
Disability procedures; 105 KAR 1:210
Employment after retirement; 105 KAR 1:390
Fred Gapps Memorial Act; 105 KAR 1.310
General compliance with federal tax laws; 105 KAR 1:430
Hazardous duty coverage; 105 KAR 1:130
Health and hospital insurance; 105 KAR 1:360
Kentucky Retirement Systems Personnel Policies; 105 KAR 1:370
Membership form requirements; 105 KAR 1:170
Minimum distribution; 105 KAR 1:380
Purchase of service credit; 105 KAR 1:330
Retirement procedures and forms; 105 KAR 1:200
Rollovers and transfers of contributions to other plans; 105 KAR 1:345
Sick leave plans; 105 KAR 1:180
Special federal income tax withholding; 105 KAR 1:270

KENTUCKY STATE POLICE, DEPARTMENT OF
Criminal History Record Information System
Dissemination of criminal history record information; 502 KAR 30:063
DNA
SUBJECT INDEX

Centralized database for DNA identification records; 502 KAR 32:010
General Traffic Accident Reports; 502 KAR 15:010

LABOR CABINET
Workplace Standards, Department of; 803 Chapter 2 (See Workplace Standards, Department of)
Workers' Claims, Department of; 803 KAR Chapter 25 (See Workers' Claims, Department of)

LANDSCAPE ARCHITECTS, BOARD OF EXAMINERS AND REGISTRATION OF
Fees; 201 KAR 10:050

LIBRARIES AND ARCHIVES, DEPARTMENT FOR
Archives
Scheduling public records for retention and disposal; procedures; 725 KAR 1:030

MEDICAID SERVICES, DEPARTMENT FOR
Medicaid Services
Dental services; 907 KAR 1:026
Diagnosis-related group (DRG) inpatient hospital reimbursement; 907 KAR 1.825
Payments for outpatient hospital services; 907 KAR 1:015
Reimbursement of dental services; 907 KAR 1:626
Repeal of 907 KAR 1:013; 907 KAR 1911E
Payment Services
Hemophilia treatment reimbursement and coverage via the 340B Drug Pricing Program; 907 KAR 3.205

MEDICAL LICENSURE, KENTUCKY BOARD OF
Repeal of 201 KAR 9:005, 201 KAR 9:005

MINE SAFETY AND LICENSING, OFFICE OF
Sanctions and Penalties
Criteria for the imposition and enforcement of sanctions against licensed premises; 805 KAR 8 060

MOTOR CARRIERS, DIVISION OF
Application for operating authority and registration of motor carriers; 601 KAR 1:040

MOTOR VEHICLE COMMISSION
Temporary off-site or display event; 605 KAR 1:060
Temporary off-site sale or display event license for a motor vehicle dealer trade association; 605 KAR1:170

NURSING, BOARD OF
Expungement of records; 201 KAR 20.410

OCCUPATIONAL THERAPY, BOARD OF LICENSURE FOR
Renewals; 201 KAR 28.090

PERSONNEL CABINET
Office of the Secretary
2009 Plan year handbook for the public employee health insurance program; 101 KAR 2:210
Personnel Cabinet, Classified
Certification and selection of eligibles for appointment; 101 KAR 2:086

PHARMACY, BOARD OF
Board
Licensing and drug distribution requirements for wholesale distributors; 201 KAR 2.105

POSTSECONDARY EDUCATION, COUNCIL ON
Kentucky Assistive Technology Loan Corporation
GEC Testing Program; 785 KAR 1:010

PRIVATE INVESTIGATORS; KENTUCKY BOARD OF LICENSURE FOR
Kentucky Board of Private Investigators
Application for licensure; 201 KAR 41.020
Fees; 201 KAR 41:040
Renewal and reinstatement procedures; 201 KAR 41:060
Inactive status; 201 KAR 41:065
Continuing professional education requirements; 201 KAR 41:070

PROFESSIONAL ENGINEERS AND LAND SURVEYORS,
BOARD OF LICENSURE FOR
Experience; 201 KAR 18:072

PUBLIC HEALTH, DEPARTMENT FOR
Food and Cosmetics
School sanitation, 902 KAR 45:150

PUBLIC PROTECTION CABINET
Financial Institutions, Department of 808 KAR Chapter10 (See Financial Institutions, Department of)
Insurance, Department of; Title 806 Chapters 2, 14-17(See Insurance, Department of)
Kentucky Horse Racing Commission; KAR Titles 610 and 611 (See Kentucky Horse Racing Commission)
Kentucky Boxing and Wrestling Authority; 201 KAR Chapter 27 (See Kentucky Boxing and Wrestling Authority)

REAL ESTATE APPRAISERS BOARD
Definitions; 201 KAR 30:010
Types of appraisers required in federally-related transactions; certification and licensure; 201 KAR 30.030

RETIREMENT SYSTEMS
(See Kentucky Retirement Systems)

REVENUE, DEPARTMENT OF
General Administration
Electronic Data Match and Levy Procedures; 103 KAR 1:150
Forms
Sales and Telecommunications Forms manual; 103 KAR 3:020
Miscellaneous Taxes Forms Manual; 103 KAR 3:050
Sales and Use Tax; General Exemptions
Energy efficiency products; 103 KAR 31:200
Sales to farmers; 103 KAR 30:091

SECURITIES, DIVISION OF
(See Financial Institutions, Department of)

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY, BOARD OF
License fees and requirements for inactive status; 201 KAR 17:030
Temporary licenses for speech-language pathologist, speech-language pathology assistant, and audiologist; 201 KAR 17:014

STATE BOARD OF ELECTIONS
(See Elections, State Board of)

TOURISM, ARTS, AND HERITAGE COUNCIL
Fish and wildlife resources, Title 301 Chapters 1-4 (See Fish and Wildlife Resources)
Kentucky Heritage Council
Administration of Kentucky Rock Fence Preservation Program; 300 KAR 6 020
SUBJECT INDEX

TRAFFIC OPERATIONS, DIVISION OF
Traffic
Safety in highway work zones; 603 KAR 5:320

TRANSPORTATION CABINET
Highways, Department of; Title 603 KAR Chapter 3 (See Highways, Department of)
Motor Carriers, Division of; 601 KAR Chapter 1 (See Motor Carriers, Division of)
Motor Vehicle Commission; Title 605 Chapter 1 (See Motor Vehicle Commission)
Traffic Operations, Division of; 603 KAR Chapter 5 (See Traffic Operations, Division of)

VETERANS’ AFFAIRS, DEPARTMENT OF
Burial Programs
Indigent veterans’ burial program; 17 KAR 4.020
Recognition
Kentucky Medal for Freedom; 17 KAR 5 010
State Veterans’ Nursing Home
Maximum charge for room and care at state veterans’ nursing home; 17 KAR 3 020

WASTE MANAGEMENT, DIVISION FOR
Generators of Hazardous Waste, Standards
Special conditions; 401 KAR 32.050
Hazardous Waste Permitting Process
Definitions; 401 KAR 38:005
Hazardous Waste Storage, Treatment and Disposal Facilities
General financial requirements; 401 KAR 34.080
Hazardous Waste Treatment, Storage, and Disposal Facilities
General financial requirements; 401 KAR 35.080
Land Disposal Restrictions
Definitions; 401 KAR 37.005
Management Facilities, Specific Hazardous Wastes and Specific Types of Hazardous Waste
Recyclable materials used in a manner constituting disposal; 401 KAR 36:030
Standards for Special Collection System Wastes
Definitions; 401 KAR 43:005

WATER, DIVISION FOR
Water Quality
KPDES pretreatment requirements; 401 KAR 5 057
Operation of wastewater systems by certified operators; 401 KAR 5 010
Repeal of 401 KAR 5 040; 401 KAR 5.012
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); 401 KAR 5.052

Water Quality Certification
Section 401 Individual Water Quality Certification fees, 401 KAR 9:020
Section 401 Individual Water Quality Certification public notice; 401 KAR 9:010

Water Quality Standards
Antidegradation policy implementation methodology, 401 KAR 10:030
Definitions for 401 KAR Chapter 10; 401 KAR 10:001
Designation of uses of surface waters; 401 KAR 10:026
General provisions; 401 KAR 10:329
Surface water standards; 401 KAR 10:031

Water Wells
Definitions for 401 KAR Chapter 6; 401 KAR 6 001
Water Supply well construction practices and standards; 401 KAR 6 310

Certification of water well drillers; 401 KAR 6:320
Monitoring well construction practices and standards, 401 KAR 3:350

WORKERS’ CLAIMS, DEPARTMENT OF
Workers’ compensation hospital fee schedule; 803 KAR 25:091
Workers’ compensation medical fee schedule for physicians; 803 KAR 25.089

WORKPLACE STANDARDS, DEPARTMENT OF
Occupational Safety and Health
General; 803 KAR 2:300
Hand and portable powered tools and other hand-held equipment; 803 KAR 2:315
Hazardous materials; 803 KAR 2:307
Occupational health and environmental controls; 803 KAR 2:306
Powered platforms, manlifts, and vehicle-mounted work platforms; 803 KAR 2:305
Recordkeeping; reporting; statistics; 803 KAR 2:180
Special industries; 803 KAR 2:317
Welding, cutting, and brazing, 803 KAR 2:316